REGD. GOA - 5

Panaji, 3rd August, 2000 (Sravana 12, 1922) SERIES II No. 18

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No.CL/Pub-Awards/97/2140

The following Award dated 28-4-97 in Reference No. IT/47/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 5th May, 1997.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/47/96

Shri Prakash Arondekar,
Canca, Abhas Wada,
P. O: Parra, Bardez Goa. — Workman/Party I

V/s

M/s Investigation Bureau of India,
Benlix Building, 3rd Floor,
Margao Goa — Employer/Party II

Workman/Party I represented by Adv. Raju Mangueshkar

Employer/Party II represented by Adv. Shri M. S. Bandodkar.

Dated: 24th, April, 1997.

AWARD

In exercise of the powers conferred by clause (d) of sub--section(1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order No.28/35/96-LAB dated 24th September, 1996 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Investigation Bureau of India, Margao-Goa, in terminating the services of Shri Prakash Arondekar, Security Guard, with effect from 13-5-1994 is legal and justified ?

If not, to what relief the workman are entitled to ?"

2. On receipt of the reference , a case was registered under No. IT/47/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I (For short "Workman") filed his Statement of Claim which is at Exb.4. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/party II (For short "Employer") as a Security Guard for a salary of Rs. 1000/- per month since December 1993. That the employer failed to pay his wages for the month of April 1994. That the workman insisted for the payment of his salary and the employer promised to make the payment on or before 15-5-1994. That on 13-5-94, the employer suddenly asked the workman not to report for work, and when the workman insisted to know the reasons and demanded a legal notice in writing as well as the payment of the wages for the month of April 1994, the Manager of the Employer threatened the workman. That inspite of reporting the matter to the Head Office at Margao, the employer failed to pay the wages of the workman as well as other legal dues. That thereafter, the workman raised an Industrial Dispute before the Labour Commissioner and the Conciliation Proceedings held by him ended in failure. The workman contended that the termination of his services is in violation of Sec. 25 F of the Industrial

Disputes Act, 1947. The workman therefore claimed that he is entitled to reinstatement in service with full back wages.

3. After the Statement of Claim was filed by the workman, the case was fixed for filing Written Statement by the Employer on 7-1-1997. On the said date, the Parties submitted that the dispute between them was amicably settled and filed terms of settlement at Exb.6. The parties prayed that Award be passed in terms of the settlement. I have gone through the terms of the settlement dated 7-1-97 Exb.6, which are duly signed by the parties. I am satisfied that the terms of the settlement are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the Award in terms of the settlement dated 7-1-1997 Exb.6.

ORDER

a) It is agreed between the parties that Shri Prakash Arondekar the workman concerned in the reference shall submit his resignation on the date of signing settlement or otherwise he shall be deemed to have been resigned from the service of the Company from the date of signing of the settlement.

b) In view of clause (a) above, it is agreed between the parties that the Company i. e. the Party No. II shall pay a sum of Rs. 5000/- (Rupees Five Thousand only) in full and final settlement of their all claims arising out of their employment and reference.

c) It is agreed between the parties that Shri Prakash Arondekar, the workman covered under the reference shall accept the amount mentioned in clause (b) against his name respectively in full and final settlement of all their claims arising out of their employment and the reference, which includes earned leave, gratuity, bonus, leave salary, etc., if any and/or any amount that may be capable of computing in terms of money and further confirm that he shall have no claim of whatsoever in nature against the Party No.II including any claim of reinstatement or re-employment.

d) The workman shall be issued a service certificate.

No order as to cost. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
(Industrial Tribunal).

Order

No. CL/Pub-Awards/97/4406

The following Award dated 12-8-1997 in reference No. IT/27/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th September, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/27/96

Shri Raju Kadri,
Rep. by the General Secretary,
Goa Municipal Workers' Union,
Kamgar Karyalay, 5
Municipal Bldg.,
St. Inez, Panaji Goa. — Workman/Party I

V/s

The Chief Officer,
Panjim Municipal Council,
Panaji Goa. — Employer/Party II

Workman/Party I represented by Adv. C. J. Mane

Employer/Party II represented by Adv. Shri Suhas Naik

Dated: 12th August, 1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 if the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order No. 28/28/96-LAB Dated 17-5-96 referred the following dispute for adjudication by this Tribunal.

" Whether the demand of Shri Raju Kadri represented through the Goa Municipal Workers Union, for regularisation in the post of Sweeper from the initial date of his appointment as daily rated workman is legal and justified ?

If not, to what relief the workman is entitled ?

2. On receipt of the reference, a case was registered under No. IT/27/96 and registered notices were issued to the parties. In pursuance to the said notice, the parties

put in their appearance. The workman/party I (for short "Workman") filed his Statement of Claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that vide letter dated 14-11-84, he was engaged by the Employer/party II (For short "Employer ") as a daily wage Sweeper on daily wages of Rs. 21/-. That the employer used to engage the workman from time to time as daily wage Sweeper by giving him artificial breaks. That by letter dated 5-12-91, the General Secretary of the Union requested the employer to regularise the services of the workman.That thereafter, the President of the Union by letter dated 4-8-92 brought to the notice of the Chief Officer of the Employer that the services of the persons who were working with the workman were regularised, but the services of the workman were not regularised. The workman contended that the duties performed by him as a Sweeper on daily wages and that of the Sweeper engaged on permanent basis were one and the same, but he was not paid salary on par with the permanent Sweepers. That the employer gave break to the workman on 1-2-94 but retained in employment the persons junior to him. That thereafter, by letter dated 6-5-94, the workman brought to the notice of the Chief Officer of the Employer that he was given break in service w.e.f. 1-5-94 and sent a copy of the said letter to the Deputy Labour Commissioner with a request to admit the same in conciliation. That the conciliation proceedings ended in a failure and consequently, a failure report was submitted to the Government. The workman claimed that he is entitled to regularisation in the post of Sweeper from the initial date of his appointment as daily rated workman.

3. The employer filed Written Statement which is at Exb. 5. The employer stated that the reference is null and void as industrial dispute does not exist. The employer denied that the workman was given aritificial breaks. The employer denied that the services of the persons working alongwith the workman were regularised. The employer stated that the workers like the workman were engaged by the employer as per the requirements in view of the urgent nature of work and the services of those persons who were found to be eligible were regularised. The employer stated that the workman was employed as purely temporary workman as per the exigencies of work, and hence he cannot claim any right to any permanency. The employer therefore, stated that there is no substance in the claim of the workman and the reference is liable to be rejected. The workman thereafter, filed Rejoinder which is at Exb. 6.

4. On the pleadings of the parties, issues , were framed at Exb.7 and the case was fixed for the evidence of the workman. However, on 22-7-97 when the case was fixed for recording the evidence of the workman, the parties filed an application dated 22-7-97 stating that the matter between the parties was amicably settled and the services of the workman were regularised on the roll of the employer. The parties submitted that since the services of the workman were regularised, there is no dispute which is surviving. The parties prayed that this Tribunal may pass the orders.

5. Since the dispute as regards regularisation was referred for adjudication at the instance of the workman and the parties have now submitted by application dated 22-7-97 that the services of the workman have been regularised, the dispute does not exist and consequently, the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist in view of regularisation of the services of the workman by the employer/Panjim Municipal Council.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/6486

The following Award dated 21-11-1997 in reference No. IT/53/97 given by the Industrial Tribunal, Panaji-Goa is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 22nd December, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/53/97

Shri Mario Fernandes,
Babeapedda, Utorda,
Salcete Goa. —Workman/Party I

V/s

M/s. Hospitality Resorts Ltd.,
Golden Tulip Hotel,
Utorda, Salcete Goa. —Employer/Party II

Workman/ Party I - Absent
Employer/Party II - Absent

Dated: 21-11-1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order dated 14 August, 1997 bearing No. IRM/CON/SG/ (15)/97/4311 referred the following dispute for adjudication by this Tribunal

" Whether the action of the management of M/s Hospitality Resorts Limited, Golden Tulip Hotel, Utorda, is dismissing from service Shri Mario Fernandes, Bell Boy, with effect from 17-5-96 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/53/97 and registered A/D notice was issued to the parties who were duly served with the notice. The workman/party/ I (For shorth 'Workman') though duly served with the notice remained absent on 21-9-97, on which date the case was fixed for hearing. Adv. Shri M. S. Bandodkar appeared on behalf of the Employer/Party II and undertook to file the letter of authority/Vakalatnama on the next date of hearing. The workman was given one more opportunity to file the Statement of Claim and the case was adjourned to 19-11-97 at 10.30 a. m. On the said date again the workman remained absent and no Statement of Claim was filed on his behalf. The Employer/ Party II (For short 'Employer') also remained absent and also Adv. Shri M. S. Bandodkar did not file any letter of authority on behalf of the Employer as undertaken by him. The reference of the dispute was made by the Government at the instance of the workman as he challenged the action of the employer dismissing him from service w.e.f.17-5-96, and as such, he raised an industrial dispute. The Bombay HighCourtPanajiBench,inthecaseofV.N.S.EngineeringServices V/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol 71 at page 393 has held that the general rule is that, he who approaches a Court for a relief to prove his case, the test being that he who does not lead evidence must fail and there is nothing in the I.D.Act,1957 which indicates a departure from the general rule. The High Court further held that Rule 10-B of the I.D.Act (Central) Rules, 1947 which requires the party raising a dispute to file his Statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of the reference and forward copies to the Opposite parties involved, clearly indicates that the party who raised the industrial dispute is bound to prove the contentions raised by him and an Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i.e. in the case of V. K. Raj Industries V/s Labour Court (I) and others, reported in 1981 (29) FLR, 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judical in nature though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but, the principles underlying the said act are applicable. The High Court held that it is well settled that if the party challenges the validity of an order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court further held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

3. In the present case, the workman, though was duly served with the notice, did not appear and also did not file any Statement of Claim. Therefore, there is no material before me to hold that the action of the Employer in dismissing the workman from service is not legal and justified. Applying the law laid down by the Bombay High Court in the case of V.N.S. Engineering Services (Supra), and by the Allahabad High Court in the case of V. K. Raj Industries (Supra), the dispute referred by the Government cannot be answered in favour of the workman and consequently, he is not entitled to any relief. I therefore, hold that the workman has failed to prove that the action of the employer in dismissing him from services w.e.f. 17-5-96 is illegal and unjustified.

In the circumstances, I pass the following order:-

ORDER

It is hereby held that the action of the Employer M/s Hospitality Resort Limited, Golden Tulip Hotel, Utorda, in dismissing from service Shri Mario Fernandes, Bell Boy, w.e.f. 17-5-96 is legal and justified.

No order as to cost. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No.CL/Pub-Awards/97/5829

The following Award dated 24-10-1997 in Reference No.IT/35/95 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary, (Labour).

Panaji, 12th November, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/35/95

Shri Gurudas Shetgaonkar,
Munag Wada, Morjim,
Pernem-Goa. — Workman/Party I

V/s

M/s National Trading Corporation,
Rizvi Chambers, Opp. Hotel Delmon,
Panaji Goa. — Employer/Party II

Workman/Party I represented by Adv. Shri P. J. Kamat
Employer/Party II represented by its Partner Shri Suhas Pai.

Dated: 24-10-97.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order No.28/25/95-LAB dated 4-8-95 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s National Trading Corporation, Panaji Goa, in terminating the services of Shri Gurudas Shetgaonkar, Technician, w.e.f. 1-11-93 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/35/95 and registered A/D notices were issued to the parties and in pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short' workman') filed his Statement of Claim which is at Exb.5. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/ Party II (For short "Employer") as a technician w.e.f. 18-12-87. That on 14-9-93, he applied for leave from 21-9-93 to 23-9-93 and that his leave was sanctioned.That on 23-9-93 the workman could not report for work on 1-10-93. The employer handed over to him a letter dated 21-9-93 making certain allegations against him and asking him to lookout for another job. That the workman continued to work with the employer till 31-10-93 and on 1-11-93, his services were verbally terminated without any notice or pay in lieu of notice. That the workman thereafter raised an industrial dispute vide his letter dated 20-11-93 addressed to the Labour Commissioner. That in the conciliation proceedings held by the Labour Commissioner, the employer did not participate and hence the conciliation proceedings ended in a failure. The workman contended that termination of his service by the employer is illegal and unjustified and is in contravention of Sec.25 (F) of the Industrial Act, 1947. The workman therefore claimed that he is entitled to reinstatement in service with full back wages.

3. The Employer filed written statement which is at Exb.6. The employer stated that the services of the workman were not terminated and that it is the workman who did not report for work and that the reference made by the Government is null and void for non application of mind as the reference proceeds on assumption of termination of services of the workman by the employer. The employer contended that the workman had applied for leave and was sanctioned leave for 2 days from 21-9-93 to 22-9-93. The employer stated that the workman did not report for duty from 23-9-93 and neither joined duties nor sent any intimation nor indicated at any stage his desire to resume work. The employer stated that the conduct of the workman indicated that he was not interested in continuing with the employment. The employer denied that the workman continued in service till 31-10-93 and that on 1-11-93, his services were verbally terminated without any notice or pay in lieu of notice. The employer denied that they did not participate in the conciliation proceedings and stated that conciliation proceedings failed due to the adamant stand taken by the workman. The employer stated that before the Conciliation Officer an offer was given to the workman to join back the duties immediately but the workman did not accept the said offer. The employer denied that the services of the workman were terminated or that there was retrenchment. The employer stated that it is the workman who failed to report for work as he was not interested in employment. The employer denied that there was contravention of Sec. 25 (F) of the I.D. Act or the rules made thereunder. The employer also denied that the workman is entitled to reinstatement with full back wages but stated that the workman is at liberty to join the services of the employer at any stage with prior notice. The workman thereafter, filed Rejoinder which is at Exb.7.

4. On the pleadings of the parties, issues were framed at Exb. 8 and the case was fixed for the evidence of the workman. On 20-10-97, when the case was fixed for hearing, both the parties submitted that the matter between the parties was settled. Both the parties filed an application praying that award be passed in terms of the settlement arrived at between the parties and enclosed alongwith the said application the terms of the settlement dated 16-8-97. I have gone through the terms of the settlement dated 16-8-97 Exb. 12 which are duly signed by the parties and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 16-8-97 Exb.12.

ORDER

1. It is agreed between the parties that the management of the Firm shall pay an amount of Rs. 28,000/- (Rupees Twenty Eight Thousands only) to Mr. Gurudas Shetgaonkar, workman in full and final settlement of all his claim.

2. It is agreed between the parties that in view of the payment of amount agreed in Clause (1) above, the workman does not press his claim for reinstatement with full back wages and continuity in service and that he is properly relieved.

3. It is agreed between the parties that the amount agreed shall be paid in two installments namely, the first installment of Rs. 20,000/- (Rupees Twenty Thousand only) on or before 15-9-97 and the balance of Rs. 8,000/- on or before 1-10-97.

4. It is agreed between the parties that on payment of full amount by 16-10-97, an application be made before the Hon'ble Tribunal, Panaji Goa, in Reference IT/35/95 for consent terms as above.

No order as to cost.

Inform the Government accordingly.

Sd/
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/5830

The following Award dated 24-10-1997 in Reference No. IT/38/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 12th November, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/38/90

Shri Xavier Fernandes,
Rep. by the Secretary,
Goa Trade & Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa. — Workman/Party I

V/s

M/s Zuari Agro Chemicals Coop.
Society,
Zuarinagar, Goa. — Employer/Party II

Workman/Party I represented by Adv. R. Mangueshkar.
Employer/Party II represented by Adv. G. K. Sardessai.

Dated:-24-10-97.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order No.28/38/90-LAB dated 22-8-90 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Zuari Agro Chemicals Employees Co-operative Society Limited, Zuarinagar-Goa in terminating the services of Shri Xavier Fernandes, w.e.f. 22-9-89 is legal and justified.

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No.IT/38/90 and registered A/D notices issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "Party I") filed his Statement of Claim which is at Exb 7. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (For short "Party II") runs a grocery shop, a petrol pump and a mini bus at Zuarinagar Goa. That in the grocery shop, consumer products are sold such as cosmetics, soft drinks, butter, cheese, rice, sugar, oil, Kerosene etc. are sold. That the employer employed more than 21 workers in their grocery shop and about 5 workers at the petrol pump. That the workman was employed at the petrol pump. That the workers unionised themselves on 7-4-86 and thereafter, served on the employer Charter of demands. That, pursuant to the formation of the Union and submitting of Charter of Demands, the Employer started harassing and victimising the workers by various methods and the President of the Workers Committee and 2 others, including the workman were arbitrarily chargesheeted and enquiries were held against them. That the workman was given chargesheet on 22-5-89 which was signed by the General Secretary of the employer. That on receipt of the said chargesheet, the workman explained to the General Secretary that the charges levelled against him had no substance and the General Secretary agreed that the matter would not be pursued, and the explanation in writing was not necessary in view of satisfactory verbal explanation from the workman. That, inspite of this, the workman was suspended from 29-5-89 and subsequently, enquiry was held. That the workman by letter dated 7-6-89 requested that he be allowed to be represented by an office bearer of the Goa Trade & Commercial Workers Union and he also requested for 15 days time to file his reply to the chargesheet. That, after the enquiry was conducted, the employer terminated the services of the workman by letter dated 22-9-89 based on the findings of the Inquiry Officer. The workman by letter dated 4-10-89 informed that he was not given reasonable and proper opportunity to participate in the enquiry and that enquiry was conducted in a biased manner and in total violation of principles of natural justice. That the workman also stated that the findings of the Inquiry Officer were perverse, unfounded and biased and therefore, the workman requested the Chairman to withdraw the letter of termination of services. That since the employer failed to reinstate the workman, industrial dispute was raised. The workman contended that his appointing authority was the Chairman of the employer and therefore, the chargesheet ought to have been issued by him and also he ought to have appointed the Inquiry Officer. The workman contended that since the chargesheet and the inquiry proceedings held against him is defective, improper, illegal and null and void. The order of terminating his service is bad in law and non-existing. The workman therefore claimed that he is entitled to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement which is at Exb. 8. The employer stated that the workman was employed as a salesman-cum-pump operator at the petrol

pump and at the time of inspection, on 19-5-89, it was reported that there were manupulation of figures in the daily sales register resulting in cash shortages, and therefore,the workman was chargesheeted on 22-5-89 for the acts of misconducts under Goa, Daman and Diu Shops and Establishments Act, 1973. The employer stated that the workman did not submit any explanation within the stipulated time and he was suspended pending enquiry. The employer stated that the workman did not attend enquiry fixed on 19-7-89 and therefore, the enquiry was conducted ex-parte. The employer stated that after appreciating the evidence on record, the Inquiry Officer submitted his findings dated 16-8-89 holding the workman guilty of fraud, mis-appropriation or dishonesty in connection with the employer' s business/property. The employer stated that the findings of the Inquiry Officer were accepted and considering the past record of the workman and on the earlier occasion, he was found guilty of misconduct of willful insubordination or disobedience of the orders of the superiors and commission of an act subversive of discipline or good behaviour on the premises of the establishment and that suitable disciplinary action was taken against him and in view of the gravity of misconducts committed by the workman, his services were terminated w.e.f. 22-9-89 and all his legal dues were paid to him. The employer denied that the workman was not given a fair and proper opportunity to participate in the enquiry or that the enquiry was conducted in a bias manner. The employer also denied that the findings of the Inquiry Officer were perverse or were not based in evidence on record. The employer denied that the chairman ought to have been issued a chargesheet to the workman or that he ought to have issued a letter of appointment to the Inquiry Officer. The employer denied that the chargesheet or the inquiry proceedings are defective and improper, illegal or null and void. The employer denied that the order of termination of services issued to the workman is bad in law or non-existing. The employer denied that the workman is entitled to any reliefs as claimed by him. The workman thereafter, filed rejoinder which is at Exb.8.

4. On the pleadings of the parties, issues, were framed at Exb.9 and the case was fixed for the evidence of the workman on preliminary issues which was touching the fairness of the enquiry. However, subsequently, the employer conceded that the enquiry was defective and consequently, this tribunal passed the order setting aside the enquiry, and the case was fixed for the evidence of the employer on the merits of the case. On 6-10-97, when the case was fixed for hearing, Adv. Shri Raju Mangueshkar, the learned counsel for the workman and Adv. Shri G. K. Sardessai, the learned counsel for the employer submitted that the dispute between the parties was settled and filed the terms of settlement dated 6-10-97 alongwith an application praying that Consent Award be passed in terms of the settlement. I have gone through the terms of the settlement dated 6-10-97 Exb. 12 which are duly signed by the parties and their respective counsels. I am satisfied that the terms of the settlement are certainly in the interest of the workman and therefore, I accept the submission made by the parties and pass the Consent Award in terms of the settlement dated 6-10-97 Exb. 12.

Order

1. The workman, Shri Xavier Fernandes agree that his services stand terminated w. e. f. 6-10-97.

2. The employer, M/s Zuari Agro Chemicals Coop. Society Limited agrees to pay a sum of Rs. 15,000/- (Rupees Fifteen Thousands only) towards full and final settlement of his dues and that the Employee/Employer relationship between them has come to an end. The workman have no claim of whatsoever against the employer.

3. The Employer agrees to pay the said amount within a week's time from the date of signing of this settlement. Both the parties agree to submit a joint application before the Industrial Tribunal, Panaji, praying for a Consent Award on the above terms and conditions.

4. It is also agreed by the workman/Union that in the event of any dispute/claim, application etc. in any Court/ /Tribunal/Office etc. have been filed by the workman/ /Union, that the same shall stand as withdrawn in view of this settlement.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No.CL/Pub-Awards/97/5325

The following Award dated 26-9-1997 in Reference No.IT/10/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisons of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 14th October, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri J. Agni, Hon'ble Presiding Officer)

Ref. IT/10/97

Shri Sudin Parshekar,
Rep.by the General Secretary,
K. T. C. Workers Union,
54, Defence Colony,
Alto Porvorim, Goa. — Workman/Party I

V/s

M/s Kadamba Transport Corp. Ltd.,
Bus Terminus,
Panaji-Goa. — Employer/Party II

Workman/Party I - Absent
Employer/Party II - represented by Shri R. K. Pillai

Dated: 26-9-1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa

by order No.IRM/CON/SG/(47)/96/412 referred the following dispute for adjudication to this Tribunal.

"Whether the action of M/s Kadamba Transport Corporation Limited, in with-holding the two increments for the years 1995 and 1996 of Shri Sudin Parshekar, Conductor, vide order No. KTC/TRP/DEF/ /(XX)/95-96/288 dated 1.7.1995 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No.IT/10/97 and registered AD notices were issued to the parties requiring them to attend the hearing fixed on 28-2-97 at 10.30 a.m. On the said date, Shri A. S. Sirvoikar appeared on behalf of the Empoyer/Party II (For short "Employer") and none appeared on behalf of the workman/Party I(For short"Workman)" as the notice which was issued to him was returned unserved with postal remark "Unclaimed". Since the notice issued to the workman was returned unserved with the postal remark "Unclaimed", another notice was sent to him Under Certificate of Posting requiring him to attend the hearing fixed on 11-4-97 at 10.30 a.m. On this date also, neither the workman nor any person on his behalf appeared and consequently, no Statement of Claim was filed on behalf of the workman. Shri Pillai, representing the employer submitted that he did not wish to file any Statement of Claim/Written Statement on behalf of the Employer and further prayed that Award be passed, holding the action of the employer in with-holding the two increments of the workman for the years 1995 and 1996 as legal and justified.

3. The Government made the above reference at the instance of the workman as he challenged the action of the Employer of with-holding the two increments for the years 1995 and 1996 by order dated 1-7-1995. The Bombay High Court in the case of V. N. S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR, Vol. 71, page 393 has held that the party who raised an industrial dispute is bound to prove the contentions raised by him and an Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. The High Court further held that the general rule is that, he who approaches a Court for a relief has to prove his case i. e. the obligation to lead evidence to establish an allegation, the test being that he who does not lead evidence must fail. The Allahabad High Court in the case of V. K. Raj Industries v/s Labour Court (I) and other reported in 1981 (29) FLR 194 has held that, if a party challenges the validity of an order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court further held that, if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any reliefs.

4. In the present case, since the dispute was raised by the workman and the dispute was referred to this Tribunal by the Government at his instance, the burden was on the workman to prove that the action of the employer in with-holding his two increments for the years 1995 and 1996 vide order dated 1-7-95 is illegal and unjustified. However, the workman did not appear in the matter and consequently, no Statement of Claim was filed on his behalf in the circumstances stated above. Therefore, there is no material before me to hold that the action of the employer in with-holding the increments of the workman for the years 1995 and 1996 is illegal and unjustified. In the circumstances, I hold that the workman has failed to prove that the action of the employer in with-holding his two increments for the years 1995 and 1996 vide order dated 1-7-95 is illegal and unjustified. The reference has to be answered in the affirmative by holding that the action of the employer is legal and justified.

Hence, I pass the following order:

Order

It is hereby held that the action of the Employer M/s. Kadamba Transport Corporation Limited in with-holding the two increments for the years 1995 and 1996 of the workman Shri Sudin Parshekar, Conductor, vide order No. KTC/TRF/DEF/(XX)/95-96/288 dated 1-7-95 is legal and justified.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/ Pub -Awards/97/6487

The following Award dated 21-11-1997 in Reference No. IT/46/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 22nd December, 1997.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/46/97

Shri Shankar D. Borkar,
Rep. by the President,
Akhil Gomantak Shramik
Utkarsh Housing Society,
Ela, Old Goa. — Workman/Party I

V/s

M/s Suresh Shinde Metal Works,
Khorlim, Mapusa,
Bardez Goa. — Employer/Party II

Workman/Party I - Absent.
Employer/Prty II represented by Adv. Shri P. J. Kamat

Dated : 21-11-1997.

Award

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by order dated 12th August, 1997 bearing No. IRM/Con-MAP/(28)/96/4271 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the employer M/s Suresh Shinde Metal Works, Khorlim- Mapusa, Goa, in terminating the services of Shri Shankar D. Borkar, Helper, with effect from 8-5-1996 is legal and justified?

If not, to what relief the workman is entitled ?"

2. On receipt of the notice, a case was registered under No. IT/46/97 and registered AD notice was issued to the Parties requiring them to attend the hearing fixed on 14-10-1997. The registered AD notice was received by the Employer/Party II (For short "Employer") and was represented by Adv. Shri P. J. Kamat. However, the registered AD notice issued to the workman/Party I was returned unserved with postal remark 'Not Known'. Thereafter, a fresh notice was served on the workman which was sent under certificate of posting as is required under the rules on the same address which was given in the Reference made by the Government. As per the said notice, the workman was required to attend the hearing on 3-11-97 at 10.30 a. m. and file his Statement of Claim. On the said date, neither the workman nor any person on his behalf attended the hearing and no Statement of Claim was filed on his behalf. Adv. Shri P. J. Kamat, representing the Employer submitted that the Employer did not wish to file any Statement of Claim/Written Statement in the matter. He submitted that the burden was on the workman to prove that the termination of his services by the Employer is illegal and unjustified. He submitted that since no Statement of Claim has been filed by the workman and since there is no evidence to prove that the termination of his services by the Employer is illegal and unjustified, the reference cannot be answered in favour of the workman. In the present case, the workman was given an opportunity to file his Statement of Claim in support of his contention that termination of his services is illegal and unjustified. He was duly served in the present case by notice which was sent under certificate of posting as required under the Industrial Disputes (Central) Rules-1957 as earlier registered AD notice which was sent to him was returned unserved. Inspite of the opportunity given, the workman did not file any Statement of Claim. The reference of the dispute was made by the Government at the instance of the workman as he challenged the action of the Employer in terminating his services w.e.f. 8-5-96 and as such, he raised an industrial dispute. The Bombay High Court, Panaji Bench, in the case of V. N. S. Engineering Services V/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the general rule is that, he who approaches a Court for a relief to prove his case, the test being that he who does not lead evidence must fail and there is nothing in the I. D. Act, 1947 which indicates a departure from the general rule. The High Court further held that Rule 10-B of th I.-D. Act (Central) Rules, 1947 which requires the party raising a dispute to file his Statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of the reference and forward copies to the opposite parties involved, clearly indicates that the party who raise the Industrial dispute is bound to prove the contentions raised by him and an Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case, i. e. in the case of V. K. Raj Industries V/s Labour Court (I) and others, reported in 1981 (29) FLR, 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said act are applicable. The High Court held that it is well settled that if the Party challenges the validity of and order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court further held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

3. In the present case, the workman, though, was duly served by notice Under Certificate of posting did not appear and also did not file any Statement of Claim. Therefore, there is no material before me to hold that the action of the Employer in terminating the services of the workman is not legal and justified. Applying the law laid down by the Bombay High Court, in the case of V. N. S. Engineering Services (Supra) and by the Allahabad High Court in the case V. X. Raj Industries (Supra), the dispute referred by the Government cannot be answered in favour of the workman and consequently, he is not entitled to any relief. I therefore, hold that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 8-5-96 is illegal and unjustified.

In the circumstances, I pass the following order:--

Order

It is hereby held that the action of the Employer M/s Suresh Shinde Metal Works, Khorlim-Mapusa Goa, in terminating the services of the workman Shri Shankar . Borkar, Helper, w.e.f. 9-5-96 is legal and justified.

No order as to costs.

Inform the Government accordingly about passing of the Award.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/5761

The following Award dated 20-10-1997 in Reference No. IT/53/89 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/53/89

Shri Ramdas Borkar,
Rep. by Goa Shipyard
Workers Union,
H. No.222, Orulem,
Vasco da Gama. — Workman/Party I

V/s

M/s Goa Shipyard Limited,
Vasco da Gama. — Employer/Party II

Workman/Party I represented by Shri Subhash Naik.
Employer/Party II represented by Adv. Shri P. J. Kamat.

Dated: 20th October, 1997.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 17th August, 1989 bearing No. 28/28/85-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Goa Shipyard Limited, in terminating the services of their workman Shri Ramdas Borkar with effect from 16-2-1984 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/53/89 and registered A/D notices were issued to the parties, and in pursuance to the said notice, the parties put in their appearance. The workman/Party I (For short "Workman") filed his statement of claim which is at Exb. 2. The case of the workman in short is that in the year 1960, prior to the Liberation of Goa, he was employed with a Shipyard known as M/s Stalir Novas Goa. After the liberation of Goa from the Portuguese regime, the said Shipyard was taken over by the Mazgaon Dock and the services of the workman were taken over by the said dock. Thereafter, in the year 1965, Mazgaon Dock was taken over by the Party II Goa Shipyard Limited (For short "Employer") and the services of the workman were taken over by the said Shipyard. Initially, the workman was employed as a Labour and thereafter, gradually, he was promoted from one grade to another. At the time when the services of the workman were terminated in the year 1984, he was working as a "Gas Cutter" in highly skilled grade. The workmen of the employer had unionised in the year 1962 and they had become the members of CITU. In or about the year 1978, the workmen formed an Union as Goa Shipyard Employees Union of which workman was also the member and was holding the post of Vice-president. However, in the year 1982, the workman and many others resigned from the said Union as they were not happy with the functioning of the said Union. These workmen thereafter, in December 1982 formed an Union known as Goa Shipyard Workers' Union and it was registered with the Registrar of Trade Unions. The workman was elected as the Vice President of the said Union and the fact of formation of Goa Shipyard Workers Union was communicated to the employer, and hence, since December 1982, two Unions started functioning in the establishment of the employer, namely, Goa Shipyard Employees Union and Goa Shipyard Workers Union. The relations between the Employees Union and the workers Union were strained because the workers Union had highlighted the failure on the part of the employees Union to take up the grievances of the workmen with the management and also that the accounts were not submitted to the members. On 26-2-1983, at about 7.30 a. m. the workman reported for work at the Repairs Division and the heading hand sent him for gas cutting job at the outer jetty. At about 8.10 a. m, the office bearers of the Employees Union along with the other workers came to the place where the workman was working. These persons were led by Shri Putu Gaonkar, the General Secretary of the said Union. Shri Putu Gaonkar lifted the workman by his shirt and asked him whether he wanted the Union which was led by Shri George Vaz. Thereafter, Shri Putu Gaonkar and the other workers namely,

Shri John Menezes, Shri B. Gains, Shri Rosario Pereira and Shri Jerome Fernandes started assaulting the workman with fist blows and kicks. As a result of the assault, the workman fell down unconsciously, and when he regained his consciousness, he found that he was in the employer's dispensary and he learnt that he was brought there by one Mr. Luis, the charge hand and one Mr. K. K. Babu an officer. After first aid was given to the workman, the doctor at the dispensary advised that the workman should be taken to the Government hospital at Chicalim and accordingly, he was taken to the said hospital in the employer's vehicle accompanied by some workmen. At the time when the workman was at the dispensary, workmen S/Shri Shantaram Kamat, Anthony Dias, Baby James and R. K. Jones were also treated there as they were also assaulted by Shri Putu Gaonkar and his gang. These workmen were assaulted because they had resigned from the employees Union and had played an active role in forming Goa Shipyard Workers Union. At the hospital at Chicalim, the doctor refused to treat the injured persons including the workman as he said that it was a criminal case. Thereafter, Vasco police were called and after the statement of the injured workmen were recorded, the doctor treated them. The doctor however, advised that the workman should be taken to the Hospicio Hospital at Margao for taking X-Ray of the skull and giving other medical treatment. The workman thereafter on 28-2-83 lodged a complaint with the employer regarding the incident of 26-2-83. The other workmen who were assaulted as also the workers Union lodged a complaint with the employer. Complaints were also filed with the police and based on the complaints, the police filed criminal cases against Mr. Putu Gaonkar and his gang for having assaulted the workman and other workers on 26-2-83. Based on the complaints, the employer issued charge sheets to eleven workmen including Mr. Putu Gaonkar. Mr. John Menezes having learnt that chargesheet is issued to him lodged a false complaint with the employer that the workmen had assaulted him on 26-2-83. On the basis of this complaint, the employer issued chargesheet to the workman and the other workers namely Anthony Dias, Gurmeet Singh, and Baby James, and subsequently, enquiries were held. The enquiry officer dismissed the charges as against Baby James and Gurmeet Singh but held the workman and Mr. Anthony Dias guilty of misconduct. As regards the enquiry held against Shri Putu Gaonkar and some other workmen, the enquiry officer held them guilty of misconduct for assaulting the workman and others. On receipt of the findings from the enquiry officer, the employer terminated the services of the workman and Shri Anthony Dias with effect from 16-2-1984 but did not dismiss the other eleven workmen from service who were the members of the employees union, though they were found guilty of misconducts. The workman contended that the findings of the enquiry officer are perverse and not based on the evidence on record and termination of his services is by way of victimisation for its union activities. The workman further contended that the punishment of dismissal awarded to him is discriminatory, unjust and disproportionate. The workman thereafter, raised an industrial dispute with the Labour Commissioner and the conciliation proceedings held, ended in a failure. Inspite of the failure report from the conciliation Officer, Government refused to refer the dispute to the Industrial Tribunal for adjudication and therefore, the workman filed a Writ Petition in the High Court and thereafter, the Government referred the matter to the Tribunal. The workman claimed that he is entitled to reinstatement with full back wages as the termination of his services is illegal and unjustified.

3. The employer filed the written statement which is at Exb. 3. The employer denied that the workman was employed with M/s. Stalir Novas Goa as a Labourer in the year 1960, or that after the Liberation of Goa in the year 1961, his services were taken over by Mazgaon Dock. The employer stated that workman was initially employed with Mazgaon Dock with effect from 17-9-62 on temporary basis and the name of Mazgaon Dock was changed to Goa Shipyard Limited with effect from 29th September, 1967. The employer admitted that initially the workman was employed as a Labourer and subsequently, he was promoted from one grade to another. The employer stated that the workman was confirmed in service from 1-1-1966 but denied that from the year 1966 or 1967, he was promoted as "Gas Cutter" in Semi-Skilled low grade. However, the employer admitted that at the time of termination of services, the workman was working as "Gas Cutter" in highly skilled grade. The employer stated that the employees Union was functioning smoothly and the workers had no grievance as regards the functioning of the said union. The employer stated that one outside union wanted an entry into the yard and hence the office bearers of the said Union with the help of some workmen of the employer formed an union known as "Goa Shipyard Workers' Union". However, since the workers union was a minority union, the employer did not recognise it as a result of which, the office bearers of the said union started violent activities in the yard. The employer denied that the workers union was formed because the workmen were unhappy with the employers Union and the employer or that, their grievances were not redressed effectively. The employer admitted that on 26-2-83, the workman reported for work at 7.30 a. m. at the repair division alongwith other workmen namely, Baby James, Anthony Dias, Gurmeet Singh and that he was sent for gas cutting job at the outer jetty. However, the employer denied that the workman in fact commenced work at outer jetty. The employer stated that the workman and the above said workmen ghera Mr. John Menezes near the machine shop while he was proceeding towards jetty for his job and the workman gave two punches on him and Mr. Anthony Dias gave two slaps on his face. The employer admitted that the workman lodged a complaint dated 28-2-83 with the employer about the incident of assault on him on 26-2-83 by Mr. Putu Goankar and others, and that a complaint was also lodged by Baby James, R. K. James, Shantaram Kamat, Anthony Dias and Avinash Agarvadekar with the employer. The employer admitted that charge sheets were issued to the workman and Mr. Anthony Dias, Gurmeet Singh and Baby James based on the complaint filed by Mr. John Menezes, but denied that it was a false complaint. The employer stated that seperate enquiries were held against the workmen who were issued charge

sheets and they were given all the opportunities to defend themselves in the enquiries. The employer stated that the services of the workman and Mr. Anthony Dias were terminated upon the receipt of the findings from the enquiry officer and on considering their past records. The employer denied that the eleven workers who were the members of the employees Union had assaulted the workman and others on 26-2-83. The employer stated that charges levelled against some workers were not proved in the enquiry and action was taken by the employer against the workmen depending upon seriousness of the offences and the past record. The employer stated that the matter of enquiry was challenged by the workman in the approval application No. IT/7/84 filed by the employer before this Tribunal and this Tribunal held that the enquiry was conducted in a fair and proper manner by order dated 25-9-95 and the saction of the employer was also approved and hence, the issue of fairness of enquiry is barred by principles of res-judicata. The employer denied that the punishment imposed upon the workman is unjust, discriminatory or disproportionate, as alleged by the workman. The employer denied that the findings of the enquiry officer are perverse or are not based on evidence on record. The employer claimed that its action in terminating the services of the workman is legal and justified. The workman thereafter, filed rejoinder which is at Exb. 4.

4. On the pleadings of the parties, following issues were framed.

1. Whether a fair, proper and impartial enquiry was held against Party I/Workman as regards the incident of assault dated 26-2-1983 ?

2. Whether the workman fully participated in the departmental enquiry and was given full opportunity to defend himself in the departmental enquiry ?

3. Whether the management acted in a fair manner by relying on the report and findings of the enquiry officer ?

4. If so, whether the action of the management in terminating the services of party I/Workman based on the report of the enquiry officer is just and proper in the circumstances of the case ?

5. Whether the above action of the management was approved by this Tribunal in IT/7/84 as contemplated u/s 33(2) (b) of the Industrial Disputes Act ?

6. Whether the findings given in regard to the fairness and legality of the domestic enquiry in IT/7/84 operates as res-judicata ?

7. If this reference is held tenable inspite of the finding in IT/7/84 dated 25-9-84, whether the action of the management in terminating the services of Shri Ramdas Borkar is just and legal in the circumstances of the case ?

8. If not, to what reliefs, if any, is the workman entitled to in this Government reference ?

5. The issue Nos. 1 and 2 are pertaining to the domestic enquiry held against the workman. In the statement of claim filed by the workman, he had contended that the demestic enquiry held against him is not fair and proper and that he had not been given proper opportunity to defend himself in the enquiry. In view of the above pleadings, issue Nos. 1 and 2 were framed accordingly. After the issues were framed, the employer filed an application dated 18-5-1990 at Exb. 6 stating that this Tribunal in case No. IT/7/84 by order dated 25-9-84 has already decided that the domestic enquiry held against the workman is fair, proper and with compliance of the principles of natural justice and the workman who was a party to the said proceedings did not challenge the said order. The employer contended that therefore, the order dated 25-9-84 passed in case No. IT/7/84 operated as res-judicat as far the issue touching the domestic enquiry. This Tribunal thereafter, by order dated 24-1-92 framed the issue No. 6 as mentioned above and after hearing the parties passed the order dated 19-8-1992, answered the issue No. 6 in the affirmative and held that issue the as regards the fairness and legality of the domestic enquiry which was decided in case No. IT/7/84 had become final and on the principles of res-judicat, the workman is bedarred from re-agitating his grievances in regard to the fairnes of the domestic enquiry. Consequently, issue No. 6 was duly disposed of by answering the same in the affirmative. This being the case, the issue Nos. 1 and 2 also stood disposed of being barred by principles anolongus to res-judicata. Thereafter, the workman led evidence on other remaining issues. However, the employer did not lead any evidence.

6. My findings on the remaining issues are as follows:-

Issue No. 3:- In the affirmative
Issue No. 4:- In the affirmative
Issue No. 5:- In the affirmative
Issue No. 7:- In the affirmative
Issue No. 8:- Workman is not entitled to any relief.

REASONS

7. *Issue Nos. 3, 4 and 7:-* These issues are taken up together as they are pertaining to the misconduct alleged to have committed by the workman and the termination order passed by the employer upon the findings given by the enquiry officer, and hence are inter-related.

Shri Subhash Naik, representing the workman submitted that the principles of res-judicata do not apply to the issue Nos. 1, 2 and 6 as what is required to be proved under Sec. 33 of the I. D. Act, is the prima facie satisfaction. He submitted that as per the charge sheet dated 8-3-83, the allegations against the workman are that he gheraoed Shri John Menezes and gave two punches on his body, and the workman had denied these allegations by his reply dated 14-3-83. He submitted that the incident

is alleged to have taken place on 26-2-83 at 7.30 a. m. but Shri John Menezes made the report only at 9.30 a. m. because according to him, he was frightened. He referred to his cross examination and submitted that in his cross, he stated that he made the report at 9.30 a. m. because in between, no officer was present. He submitted that in the evidence of Shri John Menezes, there was discripancy in the timing i. e. whether the incident occurred at 7.30 a. m. or 7.50 a. m. and there were no injuries on him nor he had gone to the medical officer. As regards the withnesses Shri Anthony Fernandes and Shri Ankush Bagkar, Shri Subhash Naik submitted that they are interested withnesses and their evidence cannot be believed because they belong to the rival union. He referred to the deposition of Shri Anthony Fernandes and submitted that in his chief, he says that he had seen the incident of fist blows being given to Shri John but in the cross he says that John was alone. As regards witness Shri Ankush Bagkar, Shri Subhash Naik submitted that though he is said to be the eye witness to the incident, he never reported the incident to any officer. He submitted that the workman has examined himself and other three witnesses in his defence in the enquiry. He submitted that the witness Shri Francisco Coutinho has stated in his deposition that he took aside Shri Anthony Dias who was being assaulted by the members of the other union and he took him to the dispensary, and that at the dispensary, he saw the workman and he with the help of Mendonsa and others, took him to the Chicalim Hospital. As regards witness Shri Anthony Gonsalves, he submitted that the said witness has seen somebody being assaulted at a distance of 40 mts. and that a jeep came and he saw Ramdas lying in the jeep. He then referred to the deposition of Shri Vithal Suphoji and submitted that though he was not an eye witness to the incident of assault on the workman, still he has seen the workman lying on the ground. Shri Subhash Naik submitted that no charge was proved against him, and on the contrary, it is proved that it was the workman who was subjected to the assault by the members of the rival union. He submitted that the findings of the enquiry officer are not based on the evidence on record and they are criptical, not reasoned. He submitted that the inquiry officer did not consider the evidence led by the workman in his defence, and on the contrary put the burden on the workman to prove that he is innocent. Shri Subhash Naik contended that if the fidings are not with application of mind, then they are liable to be set aside. In support of his this contention, he relied upon the decision of the Supreme Court in the case of Anil Kumar v/s Presiding Officer and others reported in 1985 Lab. IC 1219 and that of the Supreme Court (1) in the case of Madhya Pradesh Industries Ltd. v/s Union of India and Others reported in AIR 1966 SC 671 and (2) in the case of M/s Mahabir Prasad Santosh Kumar v/s State of U. P and others reported in AIR 1970 SC 1302. He contended that if the findings of the enquiry Officer are set aside, the termination order is also liable to be set aside. He then submitted that the chargesheet issued to the workman is vague as it does not specify as to on which part of the body the punchas were given nor it mentions the place of gherao. Shri Subhash Naik contended that there was discrimination in taking action agaist the workman because the employer had issued chargesheet to 11 workmen who had assaulted the workman, and though two workmen were found guilty, no action was taken against them. He then contended that the workman was victimised because he formed rival union. He lastly submitted that the punishment awarded to the workman is disproportionate because the incident which is alleged against him is minor and the punishment which awarded to him is that of termination of services, inspite of the fact that he had put in 21 years of service.

Adv. Shri P. J. Kamat, the learned counsel for the employer on the other hand submitted that though the incident of assault on the workman and the assault by the workman have taken place on the same date, the findings are different. He submitted that the workman in his statement before the enquiry officer did not deny the charge of gherao against him. As regards the incident of gherao and assault on Shri John Menezes, he submitted that the incident was witnessed by independent witnesses namely Shri Anthony Fernandes and Shri Ankush Bagkar and charges levelled against the workman are proved through these independent witnesses. He submitted that if there was any rivalry in the unions, the employer company which is a defence undertaking should not be penalised, and if the workman had any grievances, he ought to have approached the management. Adv. Shri P. J. Kamat submitted that the findings given by the enquiry officer are legal, just and proper as they are based on the evidence on record. He submitted that the employer has produced documents as regards the past record of the workman and if one goes through the said records, it is evident that his past record is not good. He submitted that the workman was dismissed from service after his past record was considered. In support of this contention that the punishment awarded to the workman is proper and justified, he relied upon the decision of the Bombay High Court (1) in the case of Basu Deba Das v/s M. R. Bhope and another reported in 1993 II CLR 279 (2) in the case of National Textile Corporation (South Maharashtra) Ltd. v/s Mohan Sugan Naik & Others reported in 1993 II CLR 703 (3) in the case of Municipal Corporation of Greater Bombay v/s S. E. Phadtaro & Others reported in 1994 I CLR 301. He then contended that though the workman was dismissed on 16-2-84 and the approval was granted in 1985 in reference case No. IT/7/84, he did not raise any dispute from 1985 to 1987 and therefore, in any case, he is not entitled to wages for the period from 1985 to 1987. In this respect, he relied upon the decision of the Bombay High Court in the case of R. Ganeshan V/s Union of India and others reported in 1993 Lab. I.C. 802. In reply to the submissions of Adv. Shri P. J. Kamat, Shri Subhash Naik submitted that the workman could not file Writ Petition against the order of this Tribunal granting approval in case No. IT/7/84 because the workmans is poor. He submitted that the past record of the workman cannot be said to be goal because even though the chargesheets were issued to the workman, no enquiries were held against him and no findings were given.

8. I have carefully considered the submissions made by both the parties. The contention of Shri Subhash Naik that the principles of res-judicata do not apply to the issue Nos. 1 and 2 on the ground that what is required to be proved under Sec. 33 of the I. D. Act, 1947 is the prima facie satisfaction has no substance because my learned predecessor has already disposed of the issue Nos. 1 and 2 by holding that the findings given in IT/7/84, that the domestic enquiry held is fair and legal operates as res- judicata. Therefore, once it is held that the res-judicata is applicable with reference to the fairness and legality of the findings in the domestic enquiry, the workman cannot reagitate this again before this Tribunal. The main issue before me now is whether the charges levelled against the workman are proved in the enquiry held against him.

9. The records of the enquiry proceedings which were produced in case No. IT/7/84 are on record in these proceedings. The charge sheet issued to the workman is dated 8-3-1983. In the chargesheet, it is stated that as per the report of Shri Menezes on 26-2-83 at above 7.50 a. m. the workman alongwith Shri Anthony Dias, Shri Baby James, Shri Gurmit Singh and some other workmen gheraoed him near the machine shop and gave two punches on his body, and this act on the part of the workman constitute severe misconduct under clause No. 29(xi)(xii), (xxxii) and (xxxvii) of the employers certified standing orders. Therefore, the charge which is made against the workman is that of gheraoing and assaulting Shri John Menezes. It is to be seen whether the employer has succeeded in proving these charges against the workman by leading sufficient evidence. In the enquiry besides the complainant Shri John Menezes, witnesses Shri Anthony Fernandes and Shri Ankush Bagkar were examined in support of the charges, and the workman examined himself and the witnesses Shri Francis Coutinho, Shri Anthony Gonsalves and Shri Vithal Saptoji in his defence. The incident of gherao and assault is alleged to have taken place near the machine shop on 26-2-83 at about 7.45 a. m. Shri John Menezes in his deposition has stated that on 26-2-83 at about 7.45 a. m. he was stopped infront of the machine shop by the workman and Shri Anthony Dias, Baby James and Gurmit Singh. He has further stated that they asked him as to why he had become a witness to Shri Putu Gaonkar and thereafter, immediately the workman gave blows on his stomach and Shri Anthony Dias gave two slaps on his face, and that when other workers started gathering, he managed to escape and reported for work at the jetty, and subsequently reported the matter to the General Manager. In his cross examination, the workman has not been able to bring out anything in his favour. In the cross examination of Shri John Menezes, the workman has tried to suggest that if he was beaton he would have received injury and since no injury was caused to him, his statement and complaint is false. Now, nearly because no external injury was caused to Shri John Menezes, it does not mean that he could not have been assaulted. In the cross, he has clearly stated that he was beaten in such a way that no visible injury was caused to him, and therefore, he did not go to the medical officer. The charge against the workman is that he alongwith other workers gheraoed Shri John Menezes and the workman gave two punches on his body. Shri Menezes has stated in his deposition before the enquiry officer that the workman and the other workers stopped him infront of the machine shop and the workman gave two blows on his stomach and Anthony Dias gave two slaps on his face. It is elementary that fist blows on the stomach and the slaps on the face may not cause injury and because there is no injury it cannot be said that no blows or slaps were given. Giving of blows and slap on the body of a person, though there may not be visible or external injury amounts to assault. It has come in the evidence of Shri John Menezes that he lodged the complaint with the General Manager on the same day at about 9.30 a. m. Making of this complaint has not been disputed by the workman but he has suggested that because the complaint was false, it was made to the General Manager as otherwise it would hace been made to the officer in charge. This suggestion has been denied be Shri John Menezes. Nothing has been brought on record by the workman to support his contention that the complaint ought to have been made to the officer in charge and not to the General Manager. Even otherwise, the complaint would not become false merely because it is made to the Genaral Manager directly and not to the officer in charge. The contention of Shri John Menezes that he was gheraoed and assaulted by the workman and Shri Anthony Dias is supported by two witnesses examined by him. They are Shri Anthony Fernandes and Shri Ankush Bagkar. Both these witnesses have stated that they have seen Shri John Menezes being gheraoed and the workman giving two belows to said John Menezes and Anthony Dias slapping him. Both these witnesses are the eye witnesses. In the cross examination of the said witnesses, no doubt has been created so that they are liable to be disbelieved. I do not find any contradictions in the deposition of these witnesses. Shri Subhash Naik representing the workman has submitted that these two witnesses are interested witnesses and hence they should not be believed. His contention is that these witnesses belong to the rival union. This contention of Shri Subhash Naik cannot be accepted. Merely because these witnesses are said to be beloning to the rival Union, it cannot be said they are interested witnesses. According to these witnesses, they have witnessed the incident, and from their statements recorded in the enquiry, I do not find anything so as to doubt their veracity. Merely because they happend to belong to the rival union, they cannot be dubbed as interested witnesses and their evidence cannot be discarded. Infact, there is no evidence to show that these two witnesses belong to the rival union. Nothing has been brought on record in the evidence of Shri Anthony Fernandes as to which union he belongs. There is no evidence to show that this witness belongs to the union other than to which the workman belonged. He has not been cross examined on this aspect at all. As regards the witness Shri Ankush Bagkar, what is brought on record in his cross examination is that he is the committee member of the Union. Now, he was the committee member of which union has not been brought on record. According to the workman, there were two unions, one Employees Union and the other workers Union

and the workman belonged to the Workers Union. In the absence of specific evidence that the said witness Shri Ankush Bagkar was the committee member of employees Union, it cannot be said or presumed that he belonged to the rival union. Therefore, there is no substance in the cantention of Shri Subhash Naik that these two witness are the interested witnesses and therefore, their evidence should not be believed. Shri Subhash Naik has also tried to argue that the witness Shri Ankush Bagkar should not be believed because though he is an eye witness, he did not report incident to any officer. To draw such an inference would be fallacious. The said witnesses in his cross-examination has stated that he did not inform the incident to any officer because he did feel like doing so. Firstly, there was no obligation on the said witness to report the incident to the officer, and secondly, he has given the explanation for not reporting the incident to the officer. This failure on the part of the said witness would not by itself disentitle him from being believed. Therefore, the contention of Shri John Menezes that he was gheraoed and was assaulted by the workman and Anthony Dias is supported by the evidence of the above said two witnessess namely Shri Anthony Fernandes and Shri Ankush Bagkar.

10. In defence, the workman has examined himself and three witnesses namely Shri Francis Coutinho, Shri Anthony Gonsalves and Shri Vithal Saptoji. I have gone through the deposition of these witnesses and I am of the view that their evidence does not help the workman in any manner. These witnesses have deposed as regards the incident which is alleged to have taken place after 8 a. m. of 26-2-83 which is totally different from the incident of assault alleged against the workman. The workman in his defence has tried to bring in evidence to show that he was assaulted by Shri John Menezes and some other workers belonging to his group. In his evidence, he has stated that he was assaulted by Shri John Menezes, Shri Putu Gaonkar and others at about 8 a. m. to 8.10 a. m. In support of his this contention, he has examined Shri Francis Coutinho, Shri Anthony Gonsalves and Shri Vithal Saptoji. However, none of these witnesses have supported the case of the workman. None of these witnesses have stated that they have seen the workman being assaulted by Shri John Menezes and others. Shri Francis Coutinho in his evidence has referred to Shri Anthony Dias being beaten. Though in his deposition he stated that while Shri Anthony Dias was being beaten, Shri John Menezes was there, he never stated that the said Shri John Menezes assaulted Shri Anthony Dias. He also never stated that he has seen the workman being assaulted. The witness Shri Anthony Gonsalves in his deposition has stated that he has seen one workman being beaten by a gang. However, he never stated that the said workman who was being beaten was the workman Shri Ramdas Borkar. The witness Shri Vital Saptoji in his deposition has specifically stated that he has not seen the workman being beaten by a group on 26-2-83. He has stated that he has only seen the workman lying on the ground. Therefore, it can be seen that none of the witnesses have supported the case of the workman that he was assaulted by Shri John Menezes, Shri Putu Gaonkar and others on 26-2-83 at about 8 a. m. or 8.10 a. m.

11. From what is discussed above, I am of the view that the employer has succeeded in proving by leading sufficient evidence in the enquiry that the workman and some other workers gheraoed the co-worker Shri John Menezes on 26-2-83 at about 7-50 a. m. and the workman assaulted him by giving blows on his stomach. Shri Subhash Naik, representing the workman has sought to argue that the chargesheet is vague because it does not specify as to on which part of the body of Shri John Menezes punches were given nor it mentions the place of gherao. In the first place, the objection as regards the vagueness of the chargesheet cannot be raised at this stage. The enquiry records do not show that the workman raised such objection at the time of the enquiry. The workman had filed his reply to the chargesheet denying the charges levelled against him. If desired, the workman could have sought the necessary particulars from the employer. The enquiry records show that the work man fully participated in the enquiry and had cross examined the witnesses of the management and also led evidence in his defence. This shows that the workman was fully aware of the nature of the charges levelled against him. Even otherwise, there is no substance the contention of Shri Naik that the chargesheet does not mention the place of gherao, as the chargesheet clearly stated that the workman alongwith Shri Anthony Dias, Shri Baby James, Shri Gurmit Singh and some other workmen gheraoed Shri John Menezes near the machine shop as he was going to the jetty. Therefore, the place of gherao has been mentioned in the chargesheet. This being the case, there is no substance in the contention of Shri Naik that the chargesheet is vague nor he can raise such an objection at this stage, as this Tribunal has already held that the enquiry held against the workman is fair and proper.

12. I have held that the employer has succeeded in proving by leading sufficient evidence in the enquiry that Shri John Menezes was gheraoed and the workman assaulted him by giving blows/punches on his body. The certified standing orders of the employer are on record. Clause 29 enumerates various acts and commissions which amount to misconduct. According to the employer, the above act on the part of the workman constitutes misconduct under clause No. 29 (xi), (xii), (xxxii) and (xxxiv) of the Certified Standing Orders as given below:—

Clause 29 (xi)— "Drunkness, riotous, disorderly, indecent or improper behaviour on the premises of the Establishment or outside the premise of the Establishment if it adversely affects or is likely to affect the working or discipline of the Establishment."

Clause 29(xii)— "Commission of any act subversive of discipline or good behaviour on the premises of the Establishment."

Clause 29(xxxii)— "Restraining or detaining gheraoing any representative/employee or employees of the company either inside or outside the premises of the Company."

Clause 29(xxxvii)—"Use of impolite or insulting or abusive language, assault or threat of assault, intimidation or coercion within the premises of the Company and any such act outside the premises of the company if it directly affects or is likely to affect the discipline or work or business of the Company."

The incident has taken place within the premises of the employer's establishment. There is an evidenece that Shri John Menezes, the co-worker, was gheraoed by the workman and some other workers and he was given punches/blows on the body by the workman. This amounts to assault. This act also amounts to riotous disorderly and improper behaviour on the part of the workman as also an act subversive of discipline and good behaviour. Therefore, as contended by the employer, the above act on the part of the workman amounts to misconduct under clause 29(xi), (xxii), (xxxii) and (xxxvii) of the certified Standing orders of the employer. Shri Subhash Naik representing the workman has submitted that if the findings of the enquiry officer are not with application of mind, they are liable to be set aside. In support of his this contention, he has relied upon the decision of the Supreme Court in the case of Anil Kumar (Supra); Madhya Pradesh Industries (Supra) and M/s Mahabir Prasad Santosh Kumar (Supra). There cannot be a second opinion that if the enquiry officer has given his findings without applying his mind, his findings are liable to be set aside. This is a settled law as per the decision of the Supreme Court. I have gone through the findings of the enquiry officer. The enquiry officer has held that the workman guilty of misconduct under clause No. 29 (xi), (xxii), (xxxii) and (xxxvii) of the Certified Standing Orders. The enquiry officer has given his findings on considering the evidence on record. I do not agree that the enquiry officer has given his findings without applying his mind. The enquiry officer has given reasons as to why he does not accept defence evidence. His findings are based on the evidence on record. In my view, the charges of misconduct have been sufficiently proved by the employer against the workman in the light of what is discussed by me above. I therefore, hold that the employer acted in a fair manner by relying on the findings of the enquiry officer.

13. Now, the next point for consideration is whether the action of the employer in terminating the services of the employer is legal and justified. The Supreme Court in the case of Rama Kant Mishra v/s State of Uttar Pradesh and others reported in 1983 SCC (LAS) 23 has held that the Labour Court or the Tribunal has jurisdiction and power under Sec. -11-A of the Industrial Disputes Act, 1947 to substitute its measures of punishment in place of that awarded by the employer once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. Therefore, after the introduction of Sec. 11-A, the Labour Court or the Industrial Tribunal has the jurisdiction and powers to find out for itself whether the punishment awarded by the employer is justified in the facts and circumstances of the case and if not, award lesser punishment. Adv. Shri Kamat, the learned counsel for the employer has relied upon the decisions of the Bombay High Court in the case of Basu Debu Das (Supra); National Textile Corporation of Greater Bombay (Supra) in support of his contention that the punishment awarded to the workman is legal and justified considerting the nature of the offence committed by the workman and his past conduct. I have gone through the authorities relied upon by Adv. Shri Kamat. In the case of National textile Corporation Ltd. (Supra), three workmen had threatened the enquiry officer that he would be stabbed and would not be allowed to go out of the mill on 29-11-1980 in case he proceeded with the enquiry on the said date. The Bombay High Court held that the Labour Court and the Industrial Tribunal erred in granting reinstatement with back wages on the ground that the threat were not put into action. The High Court held that at the relevant time, serious incidents of stabbing had taken place in the establishment and therefore, ordering of reinstatement ought not to have been ordered. In the case of Basu Debu Das (Supra) the workman was employed as an Asst. Cook and he was charged with the offence of abusing and assaulting co-worker with a cook's knife which resulted in injuries to the right fore-arm of the co-worker. Though the incident of assault had not taken place in the hotel itself, but in the flight kitchen, still the High Court held that the misconduct committed by the workman was gravious and rejected the contention of the workman that punishment of dismissal was far from severe. The Bombay High Court in para 34 of its. Judgment further held that whether a particular misconduct is severe or otherwise would depend upon the facts of each particular case and no hard and fast rule can be facts of each particular case and no hard fast rule can be laid down to gauge the serenity or the triviality of the misconduct. The High Court further held that a misconduct which may not be viewed, in certain circumstances, to be serious but it can be serious in another set of circumstances, and that a code of conduct which is expected of a workman varies from place to place. In the case of Municipal Corporation of Greater Bombay (Supra) the Bombay High Court held that the dismissal of the workman who was the office bearer of the Union was proper because he was instigating the workers to resort to violence and was pelting stones. The High Court in para 16 of its judgment observed as follows:

"There is growing indiscipline amongst the workers controlled by the Union and resort to violence is common. The workers controlled by some of the Unions are under the impression that even if they indulge in violent activities and damages public property, Courts will come to their rescue and permit them to continue their nefarious activities, such impression cannot be permitted to go around. High Court always takes liberal view when the interest of the employers are involved but the beneficiary legislation cannot be allowed to stretch to such an extent as to make mockery of discipline."

In another case,namely, New Shorrock Mills v/s Maheshbhai T. Rao, reported in 1997 I CLR 13 the Supreme Court held that the Labour Court ought not to have interfered with the punishment awarded after having come to the conclusion that the findings of the departmental enquiry was legal and proper, respondent's discharge order was not be way of victimisation and that the respondent workman had seriously misbehaved and thus was guilty of misconduct. The Supreme Court held that it was not a case where the Court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employees conduct and his past record, and that the Labour Court completely overlooked the fact that even prior to the incident in question, the respondent had misconducted himself on several occasions and had been punished. The above decisions therefore, lay down the proposition that whether the punishment awarded is justified or not would depend upon amongst other things the nature of the misconduct committed by the workman, the place where it was committed, the circumstances under which it was committed and his past record. In the present case, the workman was employed with Goa Shipyard Ltd. which is a defence of India undertaking, who constructs Naval Ships, Vessels required for the defence of the Country besides constructing barges, trawlers etc. Admittedly, at the time when the incident of assault had taken place, there were two unions functioning in the establishment of the employer and the Union to whom the workman belonged had come into existence subsequently. Even if it is assumed that the workman was assaulted and injured by the members of the other Union, it would not absolve the workman of the Offence which he has committed nor it will make the offence less serious. Shri John Menezes was gheraoed and assaulted by the workman before 8 a. m. whereas the alleged incident of assault on the workman had occurred after 8 a. m. on the same day. The alleged assault on the workman must have been the direct result of the assault on Shri John Menezes by the workman and his supporters. Both the incidents have taken place within the premises of the establishment of the employer at the place of work on account of Union rivalry. Though the giving of slaps and punches on the body of Shri John Menezes has not resulted in visible or bleeding injuries still, this act amounts to assault. Place of work is not a place where the workers should settle their differences by resorting to violence. These types of acts adversely affect the discipline among the workers. The observations made by the Bombay High Court in the case of Municipal Corporations of Greater Bombay (Supra) which have been quoted by me above, squarely apply to the present case. In my judgment, the misconduct committed by the workman is an act of subversive of discipline and good behaviour.

14. The employer has led evidence on the past record of the workman. The workman has admitted in his cross-examination that he was given chargesheets dated 31-5-67, 3-1-77 and 3-1-81. The said chargesheets have been produced at Exbs. 21, 21 and 22 respectively. He has further admitted that he was given a caution letter dated 13-8-82 Exb. 23 and a warning letter dated 20-1-78. In the charge sheet dated 31-5-67, it is alleged against the workman that he was found sleeping at midnight while on duty. In the chargesheet dated 3-1-77 Exb. 21, it is alleged that on 1-1-77 the workman attempted to assault the security Hawaldar on duty when he stopped some workmen who were taking out helmet given to them for use while on duty, and that he also invited the workmen to leave the Shipyard by force. This allegation is a serious allegation. In the chargsheet dated 3-9-1981 Exb. 22, several charges of misconduct have been levelled against the workman namely that of leaving his place of work and going around the yard alongwith other workers from New Construction Department stopping the workers from doing their work on 25-8-81, leaving his place of work on 27-8-81 about 9.20 hours alonwith other workers, going to the vicinity of the classrooms of GSL Apprentice School, creating commotion in the premises of the said school in an indisciplined and disorderly manner, confronting Dy. Superintendent in-charge of Apprentice school and demanding the abandonment of Apprentice Entry Examination which was scheduled to take place at 9.30 hours and thus preventing the conducting of the said examination, leaving his place of work on 27-8-81 alongwith other workers from New Construction Department and going around the yard intimidating the structural fitters and welders and stopping them from discharging their normal duties, leaving his place of work alongwith other workers on 1-9-81 at 9.20 hours and going to the GSL Apprentice School and forcibly interrupting the training of Marine Fitter (General) Trainees, making them to collect their tokens and lead them to the New Const. Dept, and other officers demanding the deployment of those trainees as helpers to Tradesman when he had no authority nor instructions from the management to do so and lastly, leaving the place of work on 1-9-81 at about 10.00 hours alongwith the other workers from New Const. Dept. to the yard and stopping the workers from doing their normal activities thereby bringing the working of the entire yard to a stand still. These charges levelled against the workman are also of a serious nature. From all the three charesheets it can be seen that the allegation was that the workman was involved in the act of High handed behaviour, spoiling the discipline in the establishment and affecting the normal work of the yard. The workman has also admitted the issuing of a warning and caution letter to him. The workman in his re-examination has stated that in respect of the above chargesheets issued to him, enquiries were held, but findings were not recorded. The outcome of the enquiries is not on record. However, the fact remains that chargesheets were issued to the workman as regards the misconducts alleged to have been committed by him and also warning and caution letter was given to him. The evidence therefore, establishes that the past conduct of the workman was not good and satisfactory.

15. Shri Subhash Naik, representing the workman has submitted that the act of the employer in dismissing

the workman from service is discriminatory. He has contended that in respect of the assault on the workman by the members of the other union namely Shri Puti Gaonkar and his supporters, 11 workers including Shri Puti Gaonkar were chargesheeted and enquiry was held and though some were held as guilty, they were not disissed from service. The workman has produced the records of the enquiry in respect of the said 11 workers at Exb. 17 colly. I have gone through the said enquiry records. The said records show that out of the 11 workers, 2 workers were held guilty of the charges of misconducts and they were Shri Puti Gaonkar and Shri Shailesh Borkar. The other workers were not held guilty of the charges and were exonorated. Assuming that the services of the said 2 workers namely Shri Puti Gaonkar and Shri Shailesh Borkar were not terminated, it does not mean that the services of the workman also should not have been terminated. To hold that there is discrimination, the set of circumstances in the case of the workman and in the case of the said two workers whose services were not terminated should be the same or similar. The inquiry records in respect of the said two workers produced at Exb. 17 colly show that the set of circumstances are not the same or similar. The workman was chargesheeted for gheraoing and assaulting Shri John Menezes. In the enquiry, he was held guilty of both the charges and consequently, was held guilty of misconduct under clause 29(xi), (xii), (xiii) and (xxxvii) of the Certified Standing Orders of the Employer whereas, Shri Shailesh Borkar was held guilty of only gheraoing the workman and was not held guilty of assaulting the workman. Shri Shailesh Borkar was held guilty of misconduct under clause 29 (xi) and (xii) of the Certified Standing Orders. Similarly Shri Putu Gaonkar was held guilty of pleading a group of workmen with the intention to beat the workman. He was not held guilty with of assaulting or beating the workman and consequently he was held guilty of misconduct under clause 29 (xi) and (xii) of the Certified Standing Orders. Besides, the past record of the workman which is on record shows that earlier, he had tried to assault a Security Hawaldar, instigating other workers to leave their place of work, he was forcing the workers to stop their work, he stopped the conducting of entry exam for the traine apprentices and thus, the workman was responsible for spoiling the discipline in the establishment of the employer and affecting the normal work in the year. There is no evidence on record to show that the past record of the said 2 workmen namely Shri Shailesh Borkar and Shri Puti Gaonkar was bad or unsatisfactory. Therefore, the case of the workman cannot be equated with the case of the said two workers whose services were not terminated to say that there is discrimination. Hence, considering all the above factors, I am of the view that the employer is justified in terminating the services of the workman and there is no reason to interfere in the punishment awarded to the workman because indiscipline of the kind with which the workman is involved is to be viewed seriously as otherwise, the same would affect the smooth functioning of the yard and also adversely affect the discipline amongst the workers as it would be presumed that even if one indulges in violent and indiscipline activities, the Court would come to his rescue and he would escape with some minor punishment. I therefore, hold that the order of termination of the services of the workman is legal and justified. In the circumstances, I answer the issue Nos. 3, 4 and 7 accordingly.

16. Issue No. 5:- The employer had filed an application before this Tribunal under Section 33 (2) (3) of the Industrial Disputes Act, 1947 for the approval of the action taken in dismissing the workman. The said application was registered as Application No. IT/7/84. The records of the said proceedings have been produced in this proceeding. The said records show that this Tribunal by order dated 25-9-85 held that the enquiry held against the workman is fair and proper and with compliance of principles of natural justice. This Tribunal further held that the employer had made out a prima-facie case for the dismissal of the workman and hence granted approval. This being the case, I answer the issue No. 5 in the affirmative.

17. Issue No. 8:- It has been held by me that the action of the employer in terminating the services of the workman is leagal and justified. This being the case, the workman is not entitled to any reliefs. I therefore, hold that the workman is not entitled to any relief and hence I answer this issue accordingly.

In the circumstances, I pass the following order:—

ORDER

It is hereby held that the action of the Employer M/s Goa Shipyard Limited, in terminating the services of their workman Shri Ramdas Borkar, Gas cutter, with effect from 16-2-1984 is legal and justified.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer
Industrial Tribunal.

Order

No. CL/Pub-Awards/97/2797

The following Award dated 9-6-1997 in Reference No. It/21/82 given by the Industrial Tribunal,Panaji-Goa, is hereby published as required under the provisons of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 25th June, 1997.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/21/82

Shri Thomas J. Pereira,
D'Mello Vaddo, Arrarim
Saligao, Bardez Goa — Workman/Party I

V/s

M/s Zuari Agro Chemicals
Limited,
Zuarinagar Goa — Employer/Party II

Workman/Party I represented by Adv. Shri Guru Shirodkar.
Employer/Party II represented by Adv. Shri G. K. Sardessai.

Dated:- 9-6-97.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section10 of the Industrial Disputes Act, 1947, the Government of Goa by order dated 26th April, 1982 bearing No. 28/30/81-ILD referred the following dispute for adjudication by this Tribunal.

"Whether the action of the employer M/s Zuari Agro Chemicals Pvt. Ltd; Zuarinagar, Goa has been legal and justified in dimissing Shri Thomas J. Pereira, Sr. Technician with effect from 9-5-80 from his service ?

If not, to what relief the workman is entitled to ?"

2. On receipt of the reference, a case was registered under No. II/21/82 and registered A/D notices were issued to the parties. In pursuance to the said notices, the parties put in their appearance. The workman/party I (For short "Workman') filed his statement of claim. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (For short "Employer") with effect from 10th December, 1975. That the workman was on duty at the storage plant from 6 p.m. of 22nd March, 1980 to 6 a.m. of 23rd March, 1980, and he handed over the charge to the next person on duty at 6.00 a.m. That on or about 9.45 a.m. one Shri S. T. Chari, the person on duty informed the management that there was a leakage of acid as a result of which the employer suffered a loss of about Rs. 400,000/- on account of the loss of phosphoric acid. That the workman was served with a charge sheet dated 24-3-90 for gross neglect of work and damage or loss whether wilful or due to irresponsible action or damage due to negligence or carelessness or to work in process or to/or of any property of the establishment. That the workman by letter dated 26-3-1980 replied to the chargesheet stating that when he last patrolled the dyke area at about 5.15 hours on 23-3-1980 he did not notice any spillage of acid. That thereafter, an equiry was conducted against him as well as against Shri S. T. Chari. That the employer also placed the workman under suspension by letter dated 7-4-1980 pending enquiry. That thereafter by order dated 9-5-1980 the employer dismissed the workman from service which was passed by the Works Manager, Mr. Krishna Murthy. That the workman was not given any opportunity to show cause against the proposed punishment nor the employer complied with the provisions of clause 24(vii) of the standing orders.That thereafter, the dispute as regards the termination of service was raised by the General Secretary of the Zuari Agro Chemicals limited Employees Union before the Labour Commissioner. That the conciliation proceeding held before the Labour Commissioner ended in failure and upon submitting the failure report, the Government referred the dispute to this Tribunal. The workman contended that though he and Shri S. T. Chari were charged for more or less similar charges he was awarded harsher punishment, whereas Shri S. T. Chari was given losser punishment that of stoppage of increments. The workman contentded that the enquiry conducted against him was in violation of the provisions of the standing orders as also the charge sheet issued to him was vague, and hence the enquiry was liable to be set aside. The workman also contended that the employer awarded punishment to him without considering the gravity of the offence, the past records and other extrenuating circumstances. The workman further contended that the findings given by the enquiry officer holding him guilty of charges are not based on the evidence on record and infact no evidence was produced by the employer to prove the charges of misconduct against him. The workman contended that he was dismissed from service by the employer by way of victimisation and unfair labour practice because he was an active member of the Union. The workman therefore, contended that termination of his services by the employer is illegal and unjustified and he is liable to be reinstated in service with full back wages.

3. The employer filed its written statement. The employer stated that the workman was posted on absorption in the storage plant at Mormugao Harbour and on 22-3-80, he was on duty from 22.00 hours in the night shift. His duty ended on 23-3-80 at 6.00 hours and he handed over the charge to Shri S. T. Chari. The employer stated that at about 6.25 hrs. Shri Chari found about the spillage and informed the management that there was spillage of phosphoric acid, and on investigation it was found that over 200 tonnes of phosphoric acid was lost thereby subjecting the employer to the loss of about Rs. 400,000/-. The employer stated that thereafter, charge sheet date 24-3-1980 was issued to the workman as well as said Shri S. T. Chari and the workman was asked to submit his explanation which was accordingly done by him on 26-3-80 wherein in the charges levelled against him were denied and he also stated that at the time when he conducted the patrolling at about 5.15 hrs. on 2-3-80, no spillage acid was noticed by him. The employer stated

that thereafter an enquiry was held from 27-3-80 to 7-4-80 and on completion of the enquiry, findings were submitted by the enquiry officer. The employer stated that it accepted the findings of the enquiry officer and since the misconduct committed by the workman was of grave nature which had resulted in the loss of Rs. 400,000/- to the employer, by letter dated 9-5-80, the workman was dismissed from service. The employer admitted that on completion of the enquiry, a second show cause notice was given to the workman but denied that provisions of clause 24(vii) of the standing orders were not complied with. The employer denied that the enquiry was held in violation of the provisions of the standing orders or that the charges levelled against him in the charge-sheet were vague. The employer stated that the enquiry held against the workman was fair and proper, and the findings submitted by the enquiry officer are based on the evidence on record. The employer stated that the standing orders do not provide for giving show cause notice to the workman prior to the passing of the dismissal order, and hence the dismissal order cannot be said to be illegal and void for the same reason as contended by the workman. The employer denied that the termination of the services of the workman is by way of victimisation or unfair labour practice as alleged by the workman. The employer denied that Shri S. T. Chari was charge sheeted for similar charges as levelled against the workman. The employer stated that while imposing the punshment on the workman, the nature of misconduct committed by the workman and by Shri S. T. Chari was considered. The employer contended that its action in terminating the services of the workman is legal and justified and the workman is not entitled to any relief claimed by him. Thereafter, the workman filed his Rejoinder.

4. On the pleadings of the parties, following issues were framed.

1. Whether the workman proves that the domestic enquiry was conducted by the employer in violation of the provisions of the standing orders 24(iv) and 24(vii) and of the principles of natural justice and fair play ?

2. Whether the workman proves that his dismissal is an act of victimisation and unfair labour practice ?

2A. Whether the workman proves that Shri G. S. Keshavmurthy, Works Manager, had no authority in law to terminate his services ?

3. Whether the Employer/Company proves that the enquiry held is fair and proper ?

4. Whether the workman proves that the punishment meted to him is arbitrary and discriminatory.?

5. Whether the workman proves that the action of the employer company in terming his terminating his services w.e.f. 9-5-80 is not legal and justified ?

6. Whether the workman in entitled to any relief ?

7. What Award ?

5. The issue nos. 1, 2A and 3 were treated as preliminary issues and the partie led evidence on the said issues. This Tribunal by order dated 13-5-1985 held that the domestic enquiry held against the workman is fair and proper and with due compliance of the principles of natural justice, disposed off the issue nos. 1 and 3 accordingly. However, no findings were given on issue No. 2A and it was stated that the same issue will be decided at the time of deciding the issue of victimisation which is the issue no. 2, alongwith the other issues. The parties thereafter led evidence on the other issues.

6. My findings on the remaining issues are as follows;

Issue No. 2 : In the negative

Issue No. 2A : In the negative

Issue No. 4 : In the negative

Issue No. 5 : In the negative

Issue No. 6 : In the negative

Issue No. 7 : As per order below.

REASONS

Issue Nos. 2, 2A, 4 and 5: These issues are taken up together as they are inter related to one another. Adv. Shri Shirodkar, the learned counsel for the workman submitted that the charge sheet issued to the workman is vague. He contended that the amount of damages is not quantified in the charge sheet and hence the termination is illegal. He relied upon the decision of the Bombay High Court in the case of Arvind Kumar Hiralal Mehta v/s Bank of Baroda and others, reported in 1992 (65) FLR 1046 on the point of vagueness of charge. He contended that the plea of vagueness of charge can be raised at any stage. He submitted that alongwith the workman, Technician Shri S. T. Chari was also charge sheeted for the same misconduct and additional charge against Shri Chari was that he had fabricated the records. He referred to the leg entry Exb. M-2 and submitted that the said entry was made by the workman, but he was not charged for fabricating the said entry and hence the said entry which mentions "Rest normal" is presumed to be correct. Adv. Shri Shirodkar submitted that Exb. N-4, the statement showing the levels of the tanks cannot be accepted because it does not carry any signature. He submitted that according to Mr. Walke who has been examined by the employer, the statement Exb. M-4 is prepared by Mr. S. T. Chari; however, Chari was not examined by the employer and hence the statement Exb. M.-4 stands not proved. He further submitted that if the statement Exb. M-4 was prepared at 9 a.m. as per the deposition of Mr. Walke, Shri S. T. Chari who is supposed to have prepared the said statement would have mentioned about the same in his report Exb. M-3 and there is no reference to the same in Exb. M-3. In support of his contention that Exb. M-4 cannot be accepted, Adv. Shri Shirodkar relied upon the decision of the Bombay High Court in the case of Vinod Kumar Balkrishna Damania v/s Standard Batteries Ltd; and another reported in 1988 (56)

FLR 257. Adv. Shri Shirodkar submitted that there is no evidence on record to prove the alleged misconduct against the workman, and the findings of the enquiry officer are not based on the evidence on record. He submitted that the Tribunal has the powers to reappropriate the evidence and arrive at the finding whether the misconduct alleged is proved. In this respect, he relied upon the decision of the Bombay High Court in the case of E Merck (India) Ltd. v/s V. N. Parulekar and others reported in 1991 (63) FLR 401. He referred to the deposition of Shri Keni and submitted that his statement cannot be believed as it is based only on assumptions. He submitted that there is no evidence that the leakage of the gas had taken place during the time when the workman was on duty, that the workman had opened the valves causing leakage. He also submitted that no test was carried out to ascertain the quantity of the gas which had leaked. Adv. Shri Shirodkar contended that the guilt must be proved beyond reasonable doubt and no presumptions or probabilities could be drawn against the workman. In this respect, he relied upon the decision of the Calcutta High Court in the case of Engineering Project of India Ltd. v/s Chandra Dip Yadav reported in 1987 (55) FLR 714; the decision of the Supreme Court in the case of Rajinder Kumar Kindra v/s Delhi Administration reported in AIR 1984 SC 1805. He further submitted that mere proof of negligence is not enough, so as to constitute misconduct. The employer has also to prove ill-motive. In this respect he relied upon the decision of the Allahabad High Court to the case of Dr. S. S. Ahluwalia v/s G. B. Pant University of Agriculture and Technology and others, reported in 1991 (62) FLR 49. Adv. Shri Shirodkar then contended that the act on the part of the employer in terminating the services of the workman is by way of victimisation because the workman was the active member of the action committee. He contended that even though Shri S. T. Chari was also chargesheeted for similar misconduct, he was not terminated but was awarded lesser punishment. This act on the part of the employer, he submitted, is arbitrary and discriminatory, and hence the termination is illegal an unjustified. In support of his this contention he relied upon the decision of the Delhi High Court (1) in the case of P. D. Gupta v/s Reserve Bank of India reported in 1989 (59) FLR 216, (2) in the case of Mrs. Usha Kumar v/s management of Super Bazar Co-operative Store Ltd, reported in 1991 (62) FLR (Sum.) 16 and (3) that of the Supreme Court in the case of Dalbir Singh v/s Director General, CRPF, New, Delhi, reported in 1987 (55) FLR 831. He further submitted that there was no stigma on the past record of the workman and there shoul have been reason to defer from the punishment awarded to the other employee Shri S. T. Chari. He submitted that no reasons are shown by the employer to award punishment of dismissal to the workman while award lesser punishment to the employee Shri S. T. Chari. In this respect, he relied upon the decision of the Supreme Court in the case of Bharat Iron Works v/s Bhagubhai Patel and others reported in AIR 1976 SC 98. He then contended that the termination is illegal because the termination letter is issued by the Manager who had no authority to issue such a letter. He contended that since the appointing Authority was the Director, he ought to have delegated powers to the works manager. In support of his this contention, he relied upon the decision of the Supreme Court in the case of Pyarelal Sharma v/s Managing Director and Others, reported in 1989 (59) FLR 220 and that of the Allahabad High Court in the case of M/s Varanasi Electric Supply Undertaking v/s Industrial and others reported in 1989 (59) FLR 813. He submitted that even if the Tribunal comes to the conclusion that misconduct is proved, it can award lesser punishment to the workman and not punishment of dismissal. In this respect he relied upon the decision of the Bombay High Court in the case of Krishna Gopal Vaity v/s M/s Collins & Co. and others, reported in 1990 (60) FLR 723.

8. Adv. Shri Sardessai, the learned counsel for the employer on the other hand submitted that the workman never raised any objection as regards the vagueness of charge. He submitted that the workman had replied to the charge sheet dated 26-3-1980 and he never stated that he did not understand the contents of the charge. He submitted that as laid down by the Bombay High Court in the case of N. N. Rao v/s Greaves Cotton and Co. reported in 1973 I LLJ 81, and the Industrial Tribunal, Bombay in the case of B.E.S.T. Workers Union v/s B.E.S.T. Undertaking, reported in 1953 I LLJ 289, the test is whether the workman is prejudical in his defence or that he raised the issue of vagueness at the earliest stage. He submitted that in the present case, the workman has failed to fulfill both the tests, as he never asked for the issue of vagueness and also he cross-examined all the witnesses of the employer produced in the enquiry which showed that he had understood the charge, and no prejfudice was caused to him. As regards the contention of the workman that the guilt must be proved beyond reasonable doubt, Adv. Shri Sardessai submitted that the Supreme Court in the case of Ratan Singh v/s State of Hariyana, reported in 1977 (34) FLR 264 has held that strict an sophisticated rules of evidence under the Indian Evidence Act may not apply in a domestic enquiry and even hearsay evidence is permissible. He also relied upon the dicision of the Supreme Court in the case of Tata Engineering and Locomotive Company Ltd. v/s Prasad and another reported in 1969 II LLJ 799 and the decisions of the Bombay High Court (1) in the case of S. K. Awasthy v/s M. R. Bhope reported in 1944 (1) CLR 254 and (2) in the case of Amar Dye-Chem Ltd. v/s M. R. Bhope and others reported in 1994 (1) CLR 565 on the same point.He

submitted that in the above cases it has been also held that the standards of a criminal trial cannot be applied in a departmental enquiry or in an inquiry before the Labour Court or Industrial Court even if the charge is of a criminal nature. He also submitted that the domestic enquiry cannot be equated to departmental enquiry under Art. 311 of the Constitution of India. In this respect, he relied upon the decision of the Supreme Court in the case of Employers of Firestone Tyre and Rubber Co. (Pvt) Ltd. v/s The Workmen reported in AIR 1968 SC 236. Adv. Shri Sardessai submitted that the Bombay High Court in the case of Rashtriya Hair Cutting Saloon v/s The Maharashtra Kamgar Sabha and others reported in 1991 (1) CLR 408 has held that rigid rule of civil or criminal trials do not apply to reception of evidence at departmental enquiries and that inferences, assumptions and guesses can take place of direct evidence provided they are reasonable. He therefore, contended that the findings of the enquiry officer are to be considered in the light of the observations made by the Supreme Court and the High Courts in the above said authorities. As regards the contention of the workman that his termination is by way of victimisation because he was the active member of the action committee, he submitted that there is no evidence that the employer earlier acted adversely against him for being the member of the action committee, or that there was no cordial relationship. He submitted that in the absence of the above evidence it cannot be held that termination of service is by way of victimisation. In support of his this contention he relied upon the decision of the Supreme Court in the case of Tata Engineering and Locomotive Company Ltd. v/s Prasad and another reported in 1969 II LLJ 799 and that of the Himachal Pradesh High Court in the case of Harisharma v/s Union of India reported in 1974 II LIC 883. As regards the contention of the workman that there is no evidence on record to prove the charge of misconduct against the workman and that the findings of the inquiry officer are not supported by evidence. Adv. Shri Sardessai submitted that there is no substance in this contention of the workman. He submitted that it is not in dispute that the workman was on duty from 10 p.m. of 22-3-1980 to 6 a.m. of 23-3-1980, and it is in the evidence of Mr. J. P. Fernandes, the witness for the workman that the dyke area is to be patrolled and the partolling is to be done every one hour. He submitted that in the evidence of the employer, the workman never denied that the spillage took place or that it did not take place during the shift of the workman. He referred to the report Exb. M-2 and submitted that the said report is in the handwriting of the workman and signed by him, and he has stated in the said report that every thing is normal. He then referred to the report Exb. M-3 of Mr. Chari an submitted that as per the said report, Mr. Chari had seen the dyke area full of acid at about 6.25 a.m. and he stopped the circulation by closing all the valves and these reports are not challenged by the workman. Adv. Shri Sardessai submitted that the report of Mr. Chari is corroborated by the witness Shri Walke who has also confirmed the document Exb. M-4 wherein the quantity of acid lost is calculated, and has stated that it was prepared by Mr. Chari. He submitted that the contention of the workman that the said document Exb. M-4 cannot be considered has no substance because the said document was produced by Shri Walke who stated that the said document was prepared by Mr. Chari and the contents of the said documents nor the production of the same was challenged by the workman. He submitted that the statement of Mr. Walke is corroborated by the witness Mr. Keni, the Production Manager, and he was cross examined by the workman on the said document M-4.. In support of his contention that the documents Exb. M-4 cannot be challenged at this stage, Shri Sardessai relied upon the decision of the Privy Council in the case of Gopal Das v/s Shri Thakurji reported in AIR 1943 PC 83; the decision of the Punjab High Court in the case of Kaka Ram Sohanlal v/s Firm Thaker Das Mathra as and another reported in AIR 1962 Punj 27; the decision of the Supreme Court in the case of P.C. Purshothama v/s S. Perumal, reported in AIR 1972 SC 608; the decision of the Karnataka High Court in the case of Guest Keen Williams Ltd. v/s The Presiding Officer, reported in 1992 I CLR 433 and that of the Bombay High Court in the case of Maharashtra State Electricity Board and another v/s National Transport Company, reported in 1991 (4) B.C.R. 556. Adv. Shri Sardessai submitted that the workman himself has admitted that when the alleged misconduct took place there was a strike and also it is in the evidence of employer's witnesses as also in the evidence of Mr. J. P. Fernandes, the workman's witness that the valves B. S,. and B. D. were always in closed position and they could not be opened by one person, and therefore, in the circumstances, the wilful act of opening the said valves with the intention of sabotage and causing loss to the employer cannot be ruled out. He further submitted that the workman did not examine himself to prove the defence taken by him and therefore he could not be subjected to cross examination. He contended that once the employer had discharged the initial burden, the burden was shifted on the workman to prove the defence version. In support of his this contention, he relied upon the decision of the Bombay High Court in the case of S. K. Awasthy v/s M. R. Bhope reported in 1994 I CLR 254. As regards the contention of the workman that there was discrimination and arbitraryness in awarding punishment to him. Shri Sardessai submitted that the charges levelled against Mr. Chari were on different footing than the workman. He submitted that the workman was grossly negligent because the leakage had taken place during the shift of the workman whereas the detection of the leakage was made by Mr. Chari, and further, the Inquiry Officer had held that some of the charges levelled against the workman were not proved. On the point of discrimination and arbitrariness in awarding punishment, Adv. Shri Sardessai relied upon the decision of the Bombay High Court, Panaji Bench in the case of B. R. Nagvenkar v/s M/s Zuari Agro Chemicals Ltd. and Others passed in Writ Petition No. 11/1985 and submitted that if the misconduct proved is of serious nature, it is sufficient to justify punishment of dismissal. As regars the contention of the workman that the employer did not consider his past conduct, Adv. Shri Sardessai submitted that it is not necessary that before awarding punishment, past record has to be considered. He submitted that if the

misconduct which is proved is itself grave, punishment of dimissal would be justified, even if past conduct was not considered. In this respect, he relied upon the decision of the Madras High Court in the cae of Solar Works, Madras v/s their workmen reported in 1968 I LLJ 769 and that of the Delhi High Court in the case of Workmen of Indian Overseas Bank v/s Indian Overseas Bank and another reported in 1973 I LLJ 316. He further submitted that even otherwise the employer has led evidence through the Personnel Manager Mr. Arvind Cordeiro and the Works Manager, Mr. G. S. Keshavmurthy that before awarding punishment, past record of the workman was considered, and even though no extneuating circumstances were found, the workman was dismissed from service on account of the gravity of misconduct. He also submitted that an employee cannot ask for considering past conduct as a matter of right. In this respect, he relied upon the decision of the Madras High Court in the case of Engine Valves Ltd. v/s Labour Court, Madras, reported in 1991 (1) LLN 268. As regards the contention of the workman that the termination order is issued by the Works Manager who has no authority to issue such an order because the powers were not delegated to him by the Director who was the appointing authority, Adv. Shri Sardessai submitted that there was no substance in this contention. He submitted that this issue was considered by the Bombay High Court, Panaji Bench, in the case of R. R. Nagvenkar v/s Zuari Agro Chemicals Ltd. in Writ Petition No 11 of 1985. He submitted that the Bombay High Court, Panaji Bench analysed the provisions of the standing orders of the employer and arrived at a conclusion that the punishment can be awarded by the Manager and that the word Manager includes Works Manager. He therefore contended that the termination of the services of the workman by the Works Manager is perfectly legal. Adv. Shri Sardessai therefore contended that there is sufficient evidence on record to prove the misconduct alleged against the workman, and his termination is legal an justified.

9. I have carefully considered the arguments advanced by both the learned counsels. It is the contention of the workman that the termination of his services by the employer is illegal because the charge sheet issued to him is vague. His contention is that the charge sheet does not mention the amount of damage caused due to the leakage of the acid, and hence the termination of his services is illegal. He has relied upon the decision of the Bombay High Court in the case of Arvind Kumar Hiralal Mehta v/s Bank of Baroda 1992 (65)FLR 1046. I have gone through the said decision of the Bombay High Court. No doubt, in the said case, the Bombay High Court did hold the charge sheet as vague because the charge sheet did not clearly indicate as to the manner in which the Bank could say that the petitioner Shri Mehta was guilty of gross negligence. The facts involved in the said case are different from the present one. In the said case, the petitioner had admitted that there was shortage of the amount in the explanation submitted by him to the Bank prior to the issuing of the charge sheet to him but he had denied his responsibility. In the circumstances, that the Bombay High Court held that the charge sheet should have mentioned the manner in which the petitioner was guilty of gross negligence. In the present case, the chargesheet Exb. E-2 which is on record does mention the manner in which the workman is guilty of gross negligence. The contention of the workman is that the chargesheet does not mention the quantity of damage caused due to the leakage. Adv. Shri Sardessai, representing the employer, however, has contended that the objection as regards vagueness of charge ought to have been raised at the earliest stage, and that the workman has raised this contention for the first time before this Tribunal. His contention is that from the reply filed by the workman, it is clear that he understood the charge. He has relied upon the decision of the Bombay High Court in the case of Greaves Cotton & Co. (Supra) and that of the Industrial Tribunal, Bombay in the case of B.E.S.T. Workers Union (Supra). I have gone through the said decisions. The gist of the said decision is that if the workman has understood the charges levelled against him and at no stage he stated that the charges are vague and indefinite or not understood by him, or that it has prejudiced him in his defence, then subsequently he cannot raise the objection that the charges are vague. The High Court of Kerala in the case of State of Kerala v/s Sukumaran Naik reported in 1966 II LLJ 403 held as follows:

"The contention that the charges are vague need not detain this Court because if the charges were really vague and if the plaintiff did not understand them, he could have certainly asked for further clarification at the hands of the authorities. There is nothing to show that the plaintiff made any such attempt and his participation in the enquiry without any protest clearly shows that he was fully aware of the nature of the allegations for which the enquiry was being conducted. Therefore, I am not inclined to accept the contentions of the learned counsel for the plaintiff - respondent that the proceedings are vitiated on the ground that the charges are vague."

This decision of the Kerala High Court squarely applies to the facts in the present case. The workman had filed his reply dated 26-3-1980 Exb. M-8 to the charge sheet, the said reply is nothing but total denial of the charges levelled against him. The records do not show that the workman at any time either before the commencement of enquiry or during the course of the enquiry complained that the charge sheet is vague. He participated in the enquiry without any protest. He has cross examined the witnesses of the employer and he has also cross examined them on the documents which the employer produced in the course of the enquiry. All these things go to show that the workman had understood the charge in respect of which the enquiry was held. In case the workman had not understood the charge or any part of the charge, the

workman could have sought clarification. However, the workman did not do so which means that the workman had understood the charge. Also the workman has not been able to show as to in what manner prejudice was caused to him. I am of the view that merely because the charge sheet does not mention the quantum of damages caused due to the leakage, in the absence of any evidence on the part of the workman as to in what manner prejudice was cause to him in his defence, it cannot be said that the charge sheet is vague. Therefore, in the light of what is discussed above, I do not agree with the contention of the workman that the charge sheet isued to him is vague and therefore termination is illegal. There is no substance in this contention of the workman.

10. Now it is to be seen whether there is sufficient evidence on record to prove the charges levelled against the workman, Adv. Shri Shirodkar, the learned Advocate for the workman has contended that the Tribunal has now powers to reappreciate the evidence and come to its own conlusion whether the misconduct alleged is proved and to find out whether the findings of the enquiry officer are based on the evidence on record. He has relied upon the decision of the Bombay High Court in the case of E'Merck (India) Ltd., (Supra) in support of his this contention. I have gone through the said decision. In the said case, the Bombay High Court has held that prior to the incorporating of Sec. 11A in the Industriial Disputes Act, 1947, the Labour Tribunals had very limited jurisdiction to interfere with the findings recorded on the enquiry and the order of punishment. But after Sec. 11A was incorporated by section 3 of the Industrial Disputes (Amendment) Act, 1971, the tribunal's Powers are very wide and are not limited to the grounds on which it could interfere with the order of dismissal or discharge passed by the management under the pre-existing law. The High Court held that now, the Tribunal is under a duty to re-appraise the evidence and satisfy itself as to whether the misconduct alleged against the workman was proved or not. Therefore, I agree with the contention of Adv. Shri Shirodkar that the Tribunal has now powers to re-appreciate the evidence and come to its own findings. Adv. Shri Shirodkar, the learned Advocate for the workman, has raised another contention that the guilt must be proved beyond reasonable doubt and no probabilities or presumptions could be drawn against the workman. He has relied upon the decision of the Calcutta High Court in the case of Engineering Project of India Ltd, (Supra) and that of the Supreme Court in the case of Rajinder Kumar Kindra (Supra). I have gone through both the said decisions. It is true that the Calcutta High Court in the case of Engineering Project of India lt; (Supra) has held that the employer has to prove the guilt of the workman beyond reasonable doubt and neither the Labour Court nor the management could proceed on surmise of presumption or assumption on fact. The Supreme Court in the case of Rajinder Kumar Kindra (Supra) has held that the enquiry is vitiated if the findings of the enquiry officer are either his ipse dixit or based on conjectures and surmises. Adv. Shri Sardessai on the other hand has contended that strict and sophisticated rules of Evidence under the Indian Evidence Act cannot be made applicable in a domostic enquiry. He has contended that standards of a criminal trial cannot be applied in a departmental enquiry or in an enquiry before the Labour Court or Industrial Tribunal nor it can be equated to a departmental enquiry under Art. 311 of the Constitution of India. He has further contend that rigid rule of Civil or criminal trials do not apply to reception of evidence at departmental enquiries and that inferences, assumptions and guesses can take place of direct evidence, provided they are reasonable. He has relied upon the various authorities of the Supreme Court and the High Courts referred to hereinabove. I have gone through the said decisions. In the case of Ratan Singh (Supra) the Supreme Court has held that strict and sophisticated rules of evidence under the Indian Evidence Act may not apply in a domestic enquiry and even hearsay evidence is permissible provided it has reasonable nexus and credibility. The Supreme Court held that the simple point is, was there some evidence or was there no evidence not in the sense of technical rules governing regular court proceedings but in a fair common sense was as men of understanding and wordly wisdom will accept. In the case of Tata Engineering and Locomotive Company Ltd. (Supra), the Supreme Court has held that the Industrial Tribunals while considering the findings of the enquiry officer should bear in mind that persons appointed to hold such enquiries are not lawyers and that such enquiries are of a simple nature where technical rules as to evidence and procedure do not prevail and such findings should not be lightly brushed aside merely because the enquiry officers have in their reports mentioned facts which are not strictly borne out by evidence before them. In the case of S. K. Awasthy (Supra)the Supreme Court has held that standards of a criminal trial cannot be made applicable to a departmental enquiry or in an enquiry before the Labour Court or Industrial Court even if the charge is of criminal nature, and even hearsay evidence is admissible. The Madhya Pradesh High Court in the case of Surjeet Singh v/s New India Assurance Co. Ltd; and another reported in 1989 IICLR 770 has held that in a departmental proceeding while considering the question whether a delinquent is guilty or not of any misconduct, it is neither necessary nor expedient to follow the criminal trial rules that an offence cannot be said to have been established unless proved beyond all reasonable doubts to the satisfaction of the Court. The Bombay High Court in the case of Anil Vasant Marathe v/s the Municipal Commissioner of Gr. Bombay reported in 1991 I CLR 405 has held that the rigid rules of Civil or criminal trials do not apply to reception of evidence at departmental

enquiries. The High Court held that inferences, assumptions and guesses can take place of direct evidence, subject to the condition that they are reasonable. From the above decisions of the Supreme Court and the various High Courts, it therefore establishes that in a domestic enquiry (1) The strict Evidence Act need not be applied (2) Even hearsay evidence is admissible provided it has reasonable nexus and credibility (3) Standards of a criminal trial cannot be made applicable to a domestic enquiry and hence guilt need not be proved beyond reasonable doubt as is required in a criminal trial and (4) Inferences, assumptions and guesses can take place of direct evidence provided they are reasonable. Therefore, in the light of the above principles the evidence is to be appreciated and the findings of the enquiry officer are to be considered.

11. The allegation against the workman as per the charge sheet dated 24th March, 1980 Exb. E-2 are that on 23-3-1980 at about 9 a.m. the Technician Mr. S. T. Chari who was on duty reported to Mr. Walke through wireless that at 6.25 a.m. the dyke area was seen covered with acid due to leakage and on investigation, it was found that the total acid spilled out from the tank should have taken minimum 4 hours. The further allegation is that since the workman was on duty in the night shift from 10 a.m. on 22-3-80 till 6 a.m. on 23-3-80, he ought to have noticed the spillage of acid if he had patrolled the area which was expected of him. The employer therefore, charged the workman for the following misconduct as per the certified standing orders.

1. Gross neglect of work — clause 22 xiii

2. Damage or loss whether wilful or due to irresponsible action, or damage due to the negligence or carelessness to or/of work in process or to/or of any property of the establishment — xvii

Therefore, from the above chargesheet, it is evident that the charges that were levelled against the workman were that of gross negligence and causing loss to the employer. The charge of gross negligence is against the workman because according to the employer there was leakage of acid from the tank in the storage plant at Vasco Harbour and this leakage occurred at the time when the workman was on duty from 10 p.m. of 22-3-1980 and 6 a.m. of 23-3-1980. The other charge of causing loss is levelled against the workman because as a consequence of the leakage of acid, the employer suffered financial loss.

12. In the enquiry, the employer examined two witnesses namely Mr. G. A. Walke and Mr. U. M. Keni in support of the charges against the workman. The workman did not examine himself but examined one witness namely Mr. J. P. Fernandes. It is not in dispute that the workman was on duty from 6 p. m. of 22-3-1980 to 6 a.m. of 23-3-1980 at the storage plant, Vasco Harbour, and he was working as the senior Technician. The witness Shri G. A. Walke in his cross examination when a specific question was put to him stated that the duties of the workman included taking hourly rounds of the installation, checking readings on the MCC checking leakages, acid tanker filling. He clarified that taking hourly rounds includes patrolling of the entire installation. He further stated that entire installation is to be patrolled to check any abnormality and in case there is abnormality to correct the same. The statement of Shri Walke has not been contradicted or denied by the workman. The workman has examined one Mr. J F. Fernandes who is also a technician and was working at the storage plant, Vasco Harbour, in shifts. In his deposition he has stated as a part of his duties he used to take regualr rounds of the installations, patrolling the installation. He has further stated that when the raining is going on he used to take round every 15 to 20 minutes and otherwise he used to take the round every one and half to two hours. From the above evidence, it is established that it was the duty of the workman to take hourly rounds of the installations which inclues patrolling, check readings, leakages etc. One of the charges against the workman is that he was grossly negligent in his duties as there was leakage of acid from the tank of the storage plant while he was on duty and if he had patrolled the area as was required of him, he would have noticed the leakage of the acid. According to the employer the leakage of the acid took place during the shift of the workman which started from 10 p.m. of 22-3-1980 and ended at 6 a.m. on 23-3-1980. It is to be seen whether there is sufficient evidence to prove this fact. At no point of time the workman disputed that there was leakage of acid from the tank at the storage plant. In the reply Exb. M-8 which he filed to the charge sheet, he simply took the defence of denial of charges. The evidence on record also does not show that the workman at any time denied there was leakage of acid. Log book entry Exb. M-2 is on record. This entry is signed by the workman. Time montioned in the said entry is from 22.00 hours to 6.00 hours i.e. from 10 p.m. to 6 a.m. In the said log book, the workman has mentioned that acid circulation was carried out throughout the shift in tank with pump No. 4. This entry in the log shift which is made by the workman himself proves that the workman was on duty in the storage plant from 10 p.m. of 22-3-80 to 6 a.m. of 23-3-1980. That at the end of the shift of the workman, he was relieved by the technician Mr. S. T. Chari is not in dispute. Mr. Chari was on duty from 6 a.m. to 2 p.m. and he was relieved by Mr. J. P. Fernandes in the shift of 2 p.m. to 10 p.m. Log Entry made by Shri Chari Exb. M-3 is on record. The entry made at 6.25 a.m. states that Mr. Chari saw the dyke area with acid and hence he stopped

the circulation and stopped the valves. The entry further states that he tried to contact Zuari but could not do as the telephone was not working. The entry made at 9.45 a.m. states that Mr. Walke came at the plant and on checking the tanks it was found that the acid was coming from the drain valve at dyke corner. This log entry made by Mr. Chari is corroborated by the testimony of Mr. Walke. In his deposition be stated that Mr. Chari contacted him on wireless at about 9 a.m. and he had asked him to contact him on telephone which he could not do so as the telephone was ringing but nobody was lifting it and therefore he contacted Mr. Chari again on wireless. He further stated that Mr. Chari informed him that lot of acid had leaked but he could not make the estimate of quantity lost and that he requested him to come for inspection immediately and accordingly he came to the installation at about 10 a.m. after informing Mr. U. M. Keni. Mr. Walke also stated that when he came to the installation, Mr. Chari had already stopped acid circulation and had closed all the valves. He has further stated that on checking, it was found that the leakage of the acid was through valve-VI. This fact has been confirmed by the witness in his cross-examination when the specific question was put to him. Mr. U. M. Keni, the Production Manager of the employer has also corroborated the statement made by Mr. Walke. He stated that he got information about the Vasco installation at about 9.15 a.m. and that he was informed by Mr. Walke that there was leakage of phosporic acid. He stated that thereafter, he alongwith Mr. Walke and Mr. Chari want to the dyke area and found that the whole area was filled with good quantity of acid. The fact about the leakage of acid is also in the evidence of Mr. J. P. Fernandes, the witness examined by the workman. He was on duty from 2 p.m. to 6 p.m. on 23-3-1980 and he has signed the log book entries Exb. M.-5. These log entries show the measures taken by Mr. Fernandes. The workman in the evidence of Mr. Fernandes never tried to dispute that there was leakage of acid. In fact, no questions were put to the witness in this aspect which means that the workman also admitted that there was leakage of acid. This is also evident from the question which were put to the said witness by the representative of the workman. To the question whether he reads the log book entries made by other technicians, he answered in the affirmative which means that he had read the log book entries Exb. M-3 made by Mr. Chari, that the dyke area was seen with acid at about6.25 a.m. This log book entry was never challenged, nor the witness stated that there was no leakage of acid. Mr. Keni, the production manager, in his deposition to the question as to how much time it would take for 450 tons of acid to leak through valve V-I stated that it would take minimum four hours. To another question as to when the leakage had started based on Mr. Chari's report, he stated that leakage had started in the previous shift i.e. in the shift when the workman was on duty i.e. from 6. p.m. of 22-3-80 to 6 a.m. of 23-3-80. The witness Mr. Keni further stated that if the workman had taken regular rounds every hour, he would have detected the leakage of acid and corrective measures could have been taken, and since the workman had not detected the leakage it showed that he had not taken regular rounds. All the above statements of the witness Mr. Keni have not been challenged in his cross examination. No suggestions are put to him that what he has stated is incorrect. There is no contrary evidence on record. Nothing has been brought on record through the evidence of Mr. J. P. Fernandes to counter the above statements of Mr. Keni. Therefore, from the above evidence which has been discussed by me, it is established by the employer that the workman was on duty from 10 p.m. of 22-3-80 to 6 a.m. of 23-3-80 at the storage plant at Vasco harbour. That among others, it was the duty of the workman to operate the plant, to check readings, to check leakages, fill acid tanks, patrolling the entire area of installation every hour or so, to check any abnormality and in case abnormality is found, to correct the same; That there was leakage of the phosphoric acid through valve V-I; That this leakage had taken place during the time when the workman was on duty because it is in the evidence of Mr. Keni that it would take about four hours to leak 450 tons of acid which according to the employer was the quantity of leakage and Mr. Chari had noticed the acid in the dyke area at about 6.25 a.m. of 23-3-80; that the workman had patrolled the installation regularly every hour or so, he would have noticed the spillage of acid; That if he had checked the valves he would have detected the leakage and corrective measures could have been taken. The above facts go to prove that the workman was grossly negligent in performing his duties. I therefore hold that the employer has succeeded in proving the charge of gross negligence against the workman.

13. The other charge against the workman is that of loss/damage causing to the property of the employer due to the negligence of the workman. It is an established fact that there was leakage of acid from the storage plant of the employer at Vasco harbour during the shift of the workman from 10 p.m. of 22-3-1980 to 6 a.m. of 23-3-1980. Though it is not specifically stated in the charge sheet as to the quantity of the acid leakage or the amount of loss caused, I have held that non mentioning of the above facts does not make the chargesheet vague. It goes without saying that when the acid had leaked, the employer did suffer loss. Now the question is what is the amount of loss that is caused. The employer has examined Mr. Keni, the production manager. Mr. Keni in his deposition has stated that the calculation of the acid loss was done by Mr. Chari and propared the estimated which is produced at Exb. M-4. This statement of Mr. Keni is also corroborated by Mr. Walke, the other witness examined

by the employer. Mr. Walke in his deposition stated that Mr. Chari had taken the dips of the tanks and had estimated the loss of acid in Exb. M-4 which amounted to 454.125 M.T. He has further stated that the dips of the tanks were again taken by him and Mr. Chari and they were the same as taken by Mr. Chari earlier. The estimate of the loss of acid prepared by Mr. Chari Exb. M-4 was produced in the evidence of the employer. Adv. Shri Shirodkar, learned advocate for the workman has contended that the witness Mr. Walke has stated in his deposition that Exb. M-4 was prepared at 9 a.m. and if it is so, then Mr. Chari would have mentioned about it in his report dated Exb. M-3. He has further contended that Exb. M-4, the calculation prepared by Mr. Chari cannot be considered because it is not proved as Mr. Chari is not examined. In support of his this contention he has relied upon the decision of the Bombay High Court in the case of Standard Batteries Ltd. (Supra). In the first place, no where in his deposition the witness Mr. Walke stated that Mr. Chari prepared the estimate Exb. M-4 at 9 a.m. Even otherwise merely because it is not mentioned in the report Exb. M-3 that such an estimate was prepared, it does not mean that the estimate Exb. M-4 was not prepared. The witnesses Mr. Walke and Mr. Keni have in their deposition stated that the estimate of the loss was prepared by Mr. Chari which is Exb. M-4. This statement of both the said witnesses was never challenged by the workman in the cross examination of the said witnesses. Adv. Shri Shirodkar has relied upon the decision of the Bombay High Court in the case of Standard Batteries Ltd. (Supra). In the said case, the enquiry officer did not consider the letter written by the co-worker to the management on the ground that the said co-worker was not examined by the delinquent employee and hence the contents of the said letter were not verified before him. The enquiry officer further held that the handwriting of the signature and the contents differed so widely that it was not possible for him to rely upon the contents of the said letter. The Bombay High Court held that the enquiry officer was right in excluding the contents of the said letter from consideration. The High Court held that the delinquent employee ought to have examined the co-worker and further held that merely because the letter came from the custody of the management its genuineness or authentity was not established an the truthfulness of the contents of the said letter had to be established. The facts of the case are not available to us. It appears that the respondent Company in the said case had disputed the genuineness of the said letter as also contents of the same, and therefore, in the circumstances of that case that the Tribunal and the High Court held that the contents of the said letter could not be relied upon because the author of the same ws not examined. Adv. Shri Sardessai, the learned Advocate for the employer has relied upon various decisions referred to earlier in support of his contention that the document, that is, the estimate exb. M-4 can be relied upon and considered. I have gone through the said decisions. In the case of P. C.Purushotham (Supra) objection was raised that police reports were inadmissible in evidence as the Head Connstables who covered the meeting were not examined. The Supreme Court over-ruled the objection and held that since the reports were marked without objection, it was not open now to object to their admissibility. In the case of Gopal Das (AIR 1943 pc 83) their Lordship held that where the objection to be taken to is not that document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the decument is marked as an exhibit and admitted to the record. Their Lordships further held that a party cannot lie by untill the case comes before a court of appeal and the complain for the first time of the made of proof. A strictly formal proof might or might not have been forth coming had it been insisted on at the Trial." In the case of the management of Guest Keen William Ltd. (Supra). The Karnataka High Court held that since no objection was raised, by the management for marking the documents as Exhibits, it is not open to the management to contend that the said documents have not been properly proved. In the case of Maharashtra State Electricity Board (Supra) the Bombay High Court held Trial Court has held that Exb. 98 to Exb. 102 were not duly proved. We find that objection to exhibit the documents was taken only in the case of (Exb. 10) show cause notice dated 12-11-90 and not in the case of other documents. Under the circumstances, there was no justification to hold so". The Bombay High Court in the case of S. K. Awasthy v/s M. R. Bhope (1994 I CLR 254) has held that the Standards of Criminal Trial cannot be applied in a departmental enquiry or in an enquiry before the Labour Court or Industrial Court even of the charge is of criminal nature. The High Court held that no formal proof is required to be adduced in respect of documents produced before the Labour Court or Industrial Court as in a civil or criminal Court. The High Court further held that probative value of the document may differ depending upon totality of eviidence led. From the above decisions therefore, it can be safely concluded that (1) In a departmental enquiry or in a proceeding before the Labour Court or Industrial Tribunal Standards of Criminal Trial are not applicable (2) No formal proof is required in respect of the documents produced in an enquiry before the Labour Court or the Industrial Tribunal (3) if no objection is raised as to the production of the document or as to the contents thereof, objection as to the admissibility of the said document or as to the proof of its contents cannot be raised subsequently. In the present case, the workman did not examine himself in the enquiry proceedings; no objection whatsoever was raised for the production of the said document Exb. M-4; no challenge was thrown to the

contents of the said document Exb. M-4 nor it was ever disputed by the workman that the said document Exb. M-4 was propared by Shri S. T. Chari. This being the case, the workman cannot raise objection to the said document Exb. M-4 at this stage. Besides, the said documents Exb. M-4 has been proved by the employer through the evidence of the witness Shri Walke. Mr. Walke in his deposition has specifically stated that the document Exb. M-4, which is the estimate of loss acid was prepared by Mr. S. T. Chari. He has further stated that the dips of the tank were again taken by him and Mr. Chari and they were the same as taken by Mr. Chari. In the circumstances, I do not agree with the contention of Adv. Shirodkar, the learned advocate for the workman, that the estimate of loss of acid Exb. M-4 cannot be relied upon and considered. I have gone through the estimate of loss of acid Exb. M-4. This estimate shows that the quantity of the acid lost is 454.125 tons. Mr. Keni the production manager in his cross examination has stated that after retriving the acid whatever possible, the total quantity of acid solution lost was about 208 tons valued at Rs. 400,000/- besides other losses. Mr. Keni has stated in his cross examination that the said loss is caused due to the negligence on the part of the workman. This statement he made in reply to the specific question put to him in cross as to what was loss caused to the establishment due to the negligence of the workman. No where in the evidence of the employer or in the evidence of the workman, it was denied that any loss was caused to the employer or that loss was caused due to the negligence of the workman or that there was no negligence on the part of the workman. The quantum of the amount of loss was also never disputed or denied. Therefore the employer has proved by sufficient evidence that loss was caused to the establishment amounting to Rs. 400,000/- due to the loss of the acid which was on account of leakage. The loss is caused to the employer due to the negligence and irresponsible behaviour on the part of the workman as the said leakage took place during the time when the workman was on duty and the workman failed in his duty either to detect the leakage, or to notice the spillage of acid or to take measures to correct the same. I have held that the workman was grossly negligent in performing his duties while discussing the charge of negligence levelled against him. I therefore, hold that the employer has succeeded in proving the charge of causing loss/damage to the property of the employer due to the negligence on the part of the workman.

The above said acts of gross negligence and causing damage or loss to the proporty of the employer are the acts of misconduct as specified in clause 32(xii) and 22 (xvii) of the certified standing orders Exb. E-4 of the employer. In the circumstances, I hold that the charge of misconduct levelled against the workman vide charge sheet dated 24-3-1980 Exb. E-2 is proved.

14. The workman has raised the contention that termination of his services is by way of victimisation and unfair labour practice because he was the active member of the action committee. It is to be seen whether there is any evidence on record to substantiate this contention of the workman. The workman in his deposition recorded before this Tribunal stated that he was the member of the Zuari Agro Chemicals Employees Union and that he was the member of the action committee formed for Vasco installation. He stated that the action committee was formed to see that the workers followed work to rule of the company at Vasco installation where he was working. He also stated that because of his being the active member of the committee his relations with the management were not cordial. In his cross examination he stated that he was not aware whether the Union had sent in writing to the management that he was the member of the action committee. The employer denied that there was anything like action committee or that he was the member of the action committee. The workman has examined his co-worker Mr. Jerome Fernandes as his witness. He stated that the Union has formed an action committee and that the workman was the member of the action committee for Vasco installation. In his cross examination he stated that he does not know in which year the action committee was formed but it was formed prior to March 1980. He stated that he does not know the names of other members of the action committee. He also stated that except for his word, there is no other evidence to show that the workman was a member of the action committee. From the evidence therefore, it cannot be established that the workman was the member of the action committee or that there was action committee at all. The workman ought to have examined any office bearer of the Union or at least some other member of the action committee. However, the workman did not do so. He could have also produced some documentary evidence to show that he was the member of the action committee or that the management was aware that he was the member of the action committee as it is his contention that his relations with the management were not cordial because of his being the member of the action committee. Therefore, in the absence of any evidence it cannot be accepted that the workman was the member of the action committee. Adv. Shri Sardessai, learned advocate for the employer has relied upon the decision of the Supreme Court in the case of Tata Engineering and Locomotive Co. Ltd. (Supra) and that of the Himachal Pradesh High Court in the case of Jit Ram (Supra) on the point of victimisation. I have gone through the said decisions. In the case of Tata Engineering and Locomotive Co. (Supra) the Supreme Court held that merely because a workman was an active union worker, the order of discharging the workman must be deemed to be malafide or passed to victimise him, even if an employer ware to be satisfied that it was prejudicial to the interest

of the employer to continue the workman in his service. This means that being an active member of the Union, by itself would not absolve the workman from action being taken against him if he is guilty of misconduct or if his continuation in service is prejudicial to the interest of the employer. In the case of Jit Ram (Supra) the Himachal Pradesh High Court has held that when malafides are imputed, there should be sufficient material on record to show that the action was motivated by malafides. The most important decision of the Supreme Court on the point of victimisation is in the case of M/s Bharat Iron Works V/s Bhagubhai Balubhai Patel and others reported in AIR 1976 SC 98. In the said case, the Supreme Court has held that victimisation is a serious charge by an employee against an employer and therefore it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The Supreme Court held that the fact there is a Union espousing the case of the employees in legitimate trade Union activity and an employee is a member or office bearer thereof, is per se, no crucial evidence. The Supreme court also held that the case of establishing a plea of victimisation will be upon the person pleading it. Mere allegation, vague suggestion and insinuations are not enough, and all particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced. The Supreme Court further held that victimisation must be directly connected with the activities of the concerned employee inevitably to the penal action without the necessary proof of a valid charge against him. The Supreme Court observed that the question to be asked is, is the reason for the punishment attributable to a gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer? The Supreme Court also held that once in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimisation will not carry the case of the employee any further, and proved misconduct is anthisesis of victimisation as understood in industrial relations. In the present case as I have already said there is no evidence to show that the workman was the member of the action committee nor there is evidence on record to show that the management had acted adversely against him for being member of the action committee, nor there is any evidence to show that the relationship of the workman with the employer was not cordial. The enquiry officer in his findings had held that the charge of misconduct levelled against the workman was proved and on accepting the said findings, the employer terminated the services of the workman. I have also held that the employer by sufficient evidence has proved the charge of misconuct against the workman. In the circumstances I do not find any substance in the contention of the workman that his serviceswere terminated by way of victimisation and unfairlabour practice. I therefore hold that the workman has failed to prove that his dismissal is an act of victimisation and unfair labour practice.

15. The workman has contended that his services were terminated by Shri G. S. Keshavmurthy, the Works Manager, who had no authority in law to terminate his services. His contention is that his appointing authority was the director and hence he ought to have delegated powers to the Works Manager. In support of his contention, he has relied upon the decision of the Supreme Court in the case of Pyarelal Sharma (Supra) and that of the Allahabad High Court in the case of M/s Varanasi Electric Supply Undertaking (Supra). Adv. Shri Sardessai, the learned Advocate for the employer on the other hand has relied upon the decision of the Bombay High Court, Panaji Bench, in Writ Petition No. 11 of 1985 in the case of R. R. Nagvenkar v/s Zuari Agro Chemicals Ltd. in support of his contention that the Works Manager could terminate the services of the workman. The workman in his deposition has stated that he was appointed by the Technical Director of the employer company. This statement of the workman has not been disputed by the employer. Now, it is to be seen whether the services of the workman could have been terminated by the Works Manager Mr. Keshavmurthy. I have gone through the decision of the Supreme Court in the case of Pyare Lal Sharma (Supra) relied upon by the workman. In the said case the Supreme Court has held that the employees of the company are not civil servants and as such they can neither claim the protection of Art. 311 (1) of the Constitution of India nor the extension of that guarantee on party. The Supreme Court further held that there is no provision in the Articles of Association or the regulations of the Company giving same protection to the employees of the Company as is given to the civil servants under Art. 311 of the Constitution of India and hence an employee of the company cannot therefore, claim that he cannot be dismissed or removed by an authority subordinate to that by which he was appointed. This means that in the case of an employee of the company his services can be terminated by an authority subordinate to the appointing authority provided he is authorised. In the case of M/s Varanasi Electric Supply Undertaking (Supra) the order of punishment was passed by the Deputy Resident Engineer whereas the workman was appointed by the Resident Engineer who was competent to appoint as well as to impose punishment under the standing orders of the Company. The Allahabad High Court held that the company had completely failed to produce any document nor any convincing evidence was led to show that the Deputy Resident Engineer was legally and

validly authorised to pass the order of punishment and in the absence of such proof, the order would be without jurisdiction and non-existence. From the above decisions it therefore follows that in the case of an employee of a company being not a civil servant under Art. 311 of the Constitution of India, his services can be termina ted by an authority subordinate to the appointing authority provided he is authorised to do so. However, the contention raised by the workman is well covered by the decision of the Bombay High Court, Panaji Bench, in Writ Petition No. 11/1985 (Supra) relied upon by Adv. Shri Sardessai, wherein the employer was the respondent. In the said case, the certified standing orders of the employer were analysed by the High Court. At para 21 of the Judgement, His Lordship Justice Couto held as follows:-

"..... It is also correct that in view of the provisions of standing order 24 (vii), it does appear that the punishment is to be awarded by the Manager since it is provided therein that in awarding punishment under the said standing orders, the Manager shall take into account the gravity of misconduct, the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist. This implies that all the powers of punishment are invested in the Manager. Now, it is clear from the order of dismissal that the same was made by the Vice President - Technical of the first respondent. Standing order 1 gives the defination of words and expressions occuring in the standing orders. Clause (f) defines "Manager" as meaning the Managing Director or the Technical Director or Directors or Vice Presidents or the Works manager or the person for the time being managing the establishment and includes any officer duly authorised to exercise powers of the manager, such authorisation being notified to the workman by displaying it on the notice board of the establishment. It becomes thus clear from the above defination of Manager that not only the managing Director or technical Director or Directors or Vice Presidents are Managers under the standing orders but also the Works Manager...."

From the above decision of the Bombay High Court, it is therefore clear that the Works Manager of the employer had the legal and valid authority under the certified standing orders of the employer Exb. E-4 to award punishment to the workman which he has done by terminating the services of the workman. This being the case, there is no substance in the contention of the workman that the Works Manager had no authority to terminate his services and therefore, his termination is illegal. In the circumstances, I hold that the workman has failed to prove that Shri G. S. Keshavmurthy, the Works Manager, had no authority in law to terminate his services.

16. The next contention of the workman is that the punishment of dismissal awarded to him is arbitrary and discriminatory. His main contention is that the other Technician Mr. S. T. Chari who was also chargesheeted was awarded lesser punishment. The workman has contended that since the charges levelled against him and against Mr. Chari were of similar in nature, the employer could not have terminated his services and awarded lesser punishment to Mr. Chari. This action on the part of the employer in according to him is arbitrary and discriminatory. Adv. Shri Shirodkar, learned Advocate for the workman has relied upon the decision of the Supreme Court in the case of Dalbir Singh (Supra) and that of the Delhi High Court in the case of P. D. Gupta (Supra) and Mrs. Usha Kumar (Supra) in this respect. Adv. Shri Sardessai, the learned Advocate for the employer, on the other hand has contended that the charges levelled against Mr. Chari were on different footing than those levelled against the workman. He has contended that the enquiry officer has held that some charges against the workman were not proved, whereas the workman was found to be grossly negligent as the leakage had taken place during the time when he was on duty. Adv. Shri Sardessai has further contended that if the misconduct proved is of serious nature, it is sufficient to justify punishment of dismissal, and in this respect, he relied upon the decision of the Bombay High Court, Panaji Bench, in the case of B. R. Nagvenkar v/s M/s Zuari Agro Chemicals Ltd. passed in Writ Petition No. 11/1985 (Supra) The findings of the Inquiry Officer pertaining to the charge sheet issued to Mr. Chari and the order passed by the Works Manager have been produced at Exb. W-2 colly. I have gone through the findings of the enquiry officer. The findings show that several charges were made against Mr. Chari like neglect of duty, falsification of records, failure to notice leakage in time, failure to inform superiors in time, failure to take immediate corrective action to avoid leakage, failure to retrive the acid and hence reduce the loss. The above charges levelled against Mr. Chari cannot be equated with the charges levelled against the workman. Mr. Chari cannot be placed on the same line with the workman. The negligence on the part of the workman is gross and is of serious nature as the leakage of the acid had taken place at the time when the workman was on duty, and it was Mr. Chari who relieved the workman at 6 a. m. on 23-3-80, noticed the leakage. Also, the findings of the enquiry officer show that Mr. Chari was absolved of many of the charges. The decision of the Delhi High Court in the case of P. D. Gupta (Supra) relied upon by Adv. Shri Shirodkar, the learned Advocate for the workman, is of no help to the workman. In the said case, the employee who was awarded minor penalty was accused of charges of more serious nature than the petitioner on the ground that he was a young person whereas the petitioner who was at the fag end of his

career was dismissed. The High Court held that if the employee could be awarded minor penalty on humanitarian grounds that he was a young person why similar view should not be taken in respect of the Petitioner who was at the feg end of his career. It is therefore, clear that the facts involved in the case of P. D. Gupta were totally different from the one involved in the present case. I am of the view that the charges levelled against the workman in the present case are of grave and serious nature than the one levelled against Mr. Chari. For the same reason, the decision of the Supreme Court in the case of Dalbir Singh is also not applicable. In the said case, three delinquent officers of CRPP including petitioner were charged of being found in a state of intoxication. The authorities awarded lesser punishment of reversion and witholding of increments to two delinquent officers who were holding higher rank to the appellant whereas the appellant was dismissal from service. In the facts of these circumstances that the Supreme Court held that thepunishment awarded to the petitioner is discriminatory. Adv. Shri Sardessai has relied upon the decision of the Bombay High Court in the case of R. R. Nagvenkarv/s Zuari Agro Chemicals Ltd. passed in Writ Petition No. 11/1965. In the said case, it has been held that the proved misconduct of very serious nature is itself sufficient to justify penalty of dismissal. In the present case, as I held earlier the misconduct which is proved against the workman is of very serious nature. Hence, in the light of what is discussed above, I hold that the workman has failed to prove that the punishment meted out to him is arbitrary and discriminatory.

17. The last contention which is raised by the workman is that while awarding punishment of dismissal to him, the employer did not consider his past cocduct. His contention is that there was no stigma on his past record and there was no reason to differ from the punishment awarded to the other employer Mr. Chari. In my opinion merely because a person had a good record or that there was no stigma whatsoever on his past record would not mean that the punishment of dismissal connot be awarded. What the standing orders say is that while awarding punishment, the management should consider the past record of the workman, if any. This does not mean that if the past record is good, under no circumstances punishment of dismissal should be awarded. To give such an interpretaton would be fallacious. In my view, awarding of the punishment would depend upon the facts in each case. If the misconduct which is proved is grave or serious, dismissal would be justified, even though the past record of the person was good. Adv. Shri Sardessai has relied upon the decision of the Madras High Court in the case of Solar Works, Madras (Supra) and that of the Delhi High Court in the case of workmen of Indian Overseas Bank (Supra). In both the above cases, it has been held that if the misconduct is of grave nature that by itself may justify the order of dismissal and the past record however may be good would not affect the gravity of the offence. The employer has examined Mr. Arvind Cordeiro the personal manager and Mr. G. S. Keshavmurthy, the works manager to prove that the past record of the workman was considered before passing the order of dismissal. Both these witnesses have stated that before passing the order of dismissal, the personal file of the workman was considered and though there were no extenuating or aggrevating circumstances against the workman, his sevices were terminated because of the gravity of the offence. This in confirmity with the decision of the Madras High Court in the case of Solar Works, Madras (Supra) and that of the Delhi High Court in the cas of workmen of Indian Overseas Bank (Supra). I, therefore, do not find any merits in the contention of the workman that his past record was good, his services could not have been terminated. The workman has also raised another contention that mere proof of negligence is not enough so as to constitute misconduct. His contention is that, so as to constitute negligence as misconduct, ill-motive is to be proved. He has relied upon the decision of the Allahabad High Court in the case of Dr. S. S. Ahluwalia (Supra). I have gone through the said decision of the Allahabad High Court. I have also gone through the decision of the Supreme Court in the case of Union of India and others v/s J. Ahmed, reported in 1979 (38) FLR 344 referred to by the Allahabad High Court in the said decision. The Supreme Court in the case of J. Ahmed (Supra) has observed that in industrial jurisprudence anongst others, habitual or gross negligence constitute misconduct. The Supreme Court while refering to its earlier decision in the case of P. N. Kalyani v/s Amir France, Calcutta, reported in (1964) 2 SCR 104, held that a single act of omission or error of judgment would not ordinarily constitute misconduct though if such error or ommission results in serious or strocious consequences the same may amount to misconduct. Clause 22 (xiii) of the certified standing orders of the empoyer lays down a habitual neglect of work or gross or habitual negligence or gross neglect or work or maligning, as an acts of misconduct. Therefore, as per the certified standing orders of the employer, gross negligence is misconduct and the employer has terminated the services of the workman on the ground that he is guilty of gross negligence. In the circumstances, there is no substance in the contention of the workman that ill-motive had to be proved.

18. I have held that the employer succeeded in proving that the workman failed in his duty either to detect the leakage of acid or to notice the spillage of acid or to take the measures to correct the same, and hence the workman was grossly negligent in performing his duties.

I have also held that the employer has succeeded in proving the charge of causing loss/damage to the property of the employer due to the negligence on the part of the workman. I have further held that the above said acts on the part of the workman amount to misconduct as specified in clause 22 (xiii) and 22 (xvii) of the certified standing orders Exb. E-4 of the employer. Now the question is whether the order of dismissal passed against the workman is legal and justified. To find out whether the order of dismissal is legal and justified, it is necessary to consider the nature of misconduct committed by the workman. It is an admitted fact that the workman was working as a Senior Technician and he was on duty from 10 p.m. of 22-3-80 to 6 a.m. of 23-3-80 at the storage plant, Vasco Harbour. It has been established that his duty was to operate the plant, to check the readings, to check the leakages, fill acid tanks, patrol the entire area of installation every hour, to check any abnormality and if any abnormality is found, to correct the same. From the above, it is evident that the workman was holding a responsible post and also that of confidence. The workman was expected to discharge his duties deligently and sincerely as slight negligence on his part could cause major mishap and heavy loss to the employer. It has been proved that the spillage of the acid took place during the time when the workman was working in the shift from 6 p.m. of 22-3-80 to 6 a.m. of 23-3-80. If the workman had discharged his duties properly as enumerated above, the spillage of the acid would have been avoided and corrective measures could have been taken. The Supreme Court in the case of Union of India v/s J. Ahmed reported in 1979 (38) FLR 344 has held that there may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. The Supreme Court further held that an error can be indicative of negligence and the degree of culpability may indicate the gross nesss of the negligence. In the present case, due to the negligence of the workman, the loss which has been caused to the employer is very heavy. The estimated quantity of acid lost is 454.125 tons, valued at Rs. 400,000 which means that on account of the negligence on the part of the workman, the employer suffered the loss of Rs. 400,000/-. This loss or damage is directly attributable to the negligence of the workman. The negligence is a gross negligence and the misconduct committed by the workman is of grave and serious nature. I have gone through the findings of the enquiry officer produced at Exb. E-3. I am of the view that the findings of the enquiry officer holding the workman guilty of charges are proper and based on the evidence on record. This being the case, I hold that the action of the employer in terminating the services of the workman with effect from 9-5-1980 is legal and justified

In the circumstances, I answer the issue Nos. 2, 2A, 4 and 5 accordingly.

18. *ISSUE No.6*:- I have held that the charges of misconduct levelled against the workman are proved. I have held that the action of the employer in terminating the services of the workman w.e.f. 9-5-1980 is legal and justified. This being the case, the workman is not entitled to any relief. I therefore, hold that the workman is not entitled to any relief and answer the issue No. 6 in the negative.

Hence, I pass the following order.

Order

It is hereby held that the action of the employer M/s Zuari Agro Chemicals Pvt. Ltd., Zuarinagar Goa, in dismissing the workman Shri Thomas J. Pereira, Sr. Technician, from service with effect from 9-5-1980 is legal and justified. The workman Shri Thomas Pereira is not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

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